



The give-and-take of municipal developers' fees

Creative strategies needed to find balance

by Thomas Gump

Editor's Note: This continuing column will take the Minnesota Real Estate Journal's readers through the life of a mixed-use development project — from start to finish. It uses the Stone's Throw project, a newly developing, 634-acre community in Northwest Hennepin County, as its real-life example of the issues and challenges facing today's developers.

When it comes to planning a new development, it usually means a little bit of give and take on the part of both a city and the developer. Developers and municipalities often work together to find creative strategies to support new development projects, because it is in the best interest of both to do so. One such example is the development fees agreement.

An "agreement for payment of development fees" is an agreement between a developer and at least one municipality, whereby a developer who already has started a development *i.e.*, the developer has already filed land-use applications with the subject municipality) agrees to pay certain fees, while the municipality agrees to lock in the types and amounts of fees for the development for a specific length of time.

Development fees agreements can be used for a variety of reasons. In some cases, a development company needs such an agreement to determine and fix its development costs,



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Gump

so it can set the pricing for the lots that it will develop and eventually sell.

Development fee agreements are also used in large, master-planned communities where the property is likely to be developed in phases or stages. They also are typically used when the precise nature, order and timing of the construction of the various phases within the development are dependent upon market conditions.

Finally, they are used when a developer must make substantial expenditures in developing the property over a significant period of time.

A real life example: The Stone's Throw fees agreement

The Beard Group, developer of Stone's Throw, wanted to enter into

contracts with its end builder-buyers pursuant to which it would deliver finished residential lots to its clients. However, it was difficult for the developer to determine a contract price, since it was uncertain what fees Hassan Township and the city of Rogers would charge at the time of lot development and delivery.

The Stone's Throw community will be developed in Hassan, but the town has entered into an orderly annexation agreement (OAA) with Rogers. The OAA means that Hassan eventually will be annexed into Rogers, which could occur during the development of the Stone's Throw project. Because of this, the developer was concerned with the types and amounts of fees that would be charged by both municipalities. Depending on the timing of the annexation, the fees could be charged by both Hassan and Rogers.

Typically, the developer would have simply submitted and processed its development application and entered into a development agreement with the township, which could have locked in the fees. However, in this case it was not possible, because the concept of a development fees agreement was being discussed by the developer and the two governmental units at a time when Hassan had not yet revised its planned unit development (PUD) ordinance to allow needed flexibility for the type of development The Beard Group is planning for the site. (Hassan has since revised its PUD ordinance.)

The developer requested an early-stage development fees agreement so

it could lock in the municipal fees to some degree of certainty for the first phase of its development for a limited period of time. This would allow the developer to formulate prices for its first phase end builder-buyers with some certainty as to its development costs. Without an agreement to lock fees into a set range, they could have increased significantly, putting the economic viability of the project into question.

Meanwhile, the governmental units wanted to make sure that the project did not add additional burdens on the community that were not met by the developer's improvements, dedications and/or fees.

The solution

In the case of the Stone's Throw development, the solution was to draft an agreement that protects both the developer and the municipalities. The developer is protected because

Rogers and Hassan agreed to lock in its fees for Phase I of the project for a period of approximately three-and-a-half years (by that time the developer and the municipalities will have negotiated a PUD agreement).

Under the terms of the fees agreement, Rogers and Hassan can only increase the fees if all other properties in the township/city are subject to the same thing. Also, the increase is limited to inflation based on the annual percentage increase in the Construction Price Index.

The municipalities also are protected in several ways. First, the developer is locked into paying certain development fees associated with development of the property. Second, the fee amounts are set and, as discussed above, they can increase. Third, the fees lock is for a relatively short period of time.

Lastly, the agreement specifically states that it does not prohibit Hassan

and/or Rogers from levying special assessments for public improvements that are installed and assessed in compliance with Minnesota Statutes, Chapter 429.

The development fees agreement was passed by the city of Rogers and the Hassan Town Board at a joint meeting in early June, and the agreement was executed in July.

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