

IMPACT FEES *in* ILLINOIS



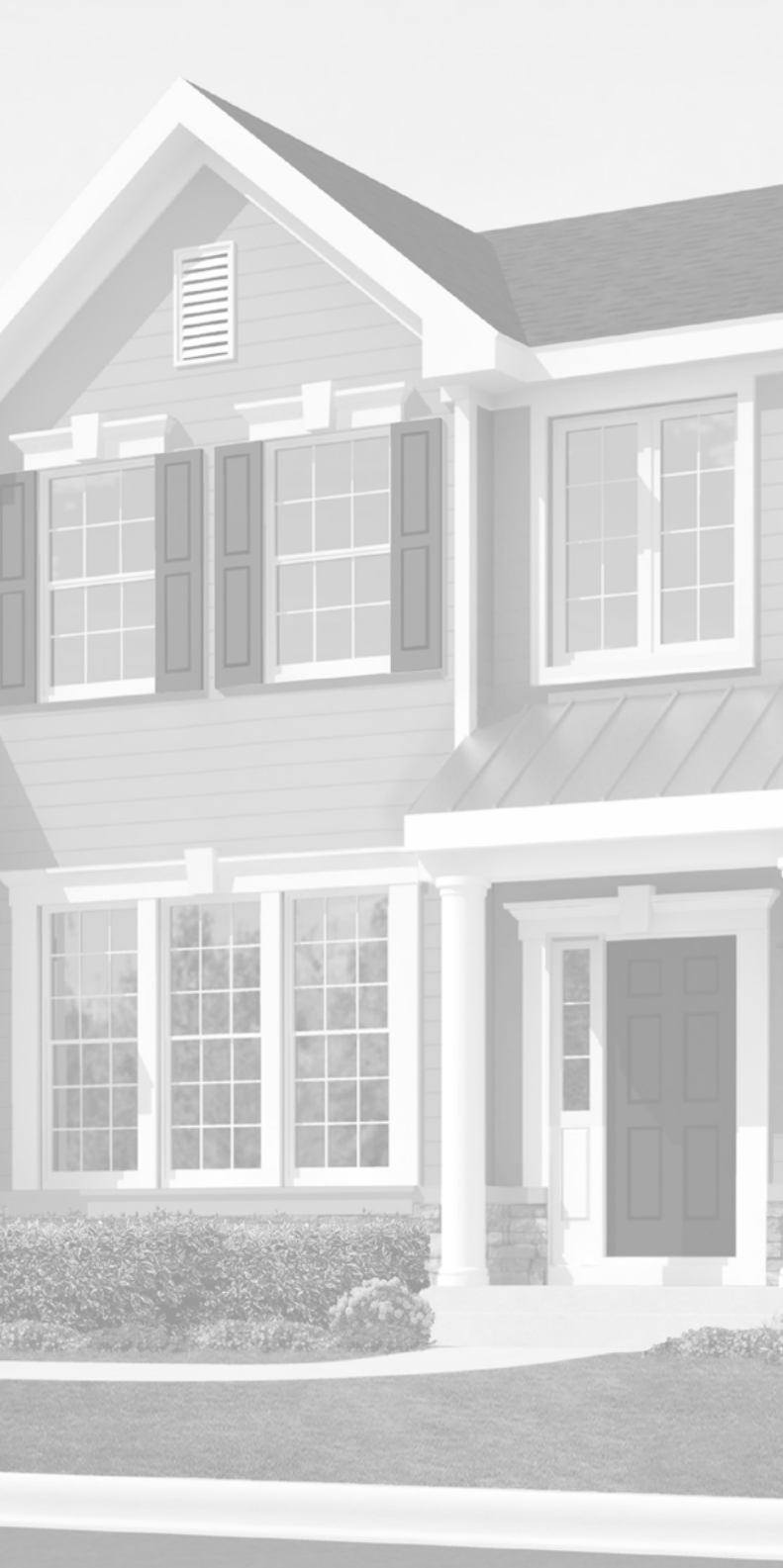
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The Purpose of this Report



...is to provide information and guidance to aid in the discussion and consideration of impact fees at the local level. It addresses a range of topics to present a thorough understanding of impact fees:

- ▶ Impact Fee State Law
- ▶ Impact Fee Case Law
- ▶ Types of Fees that Exist in Illinois
- ▶ Items to Consider When Enacting Impact Fees

IMPACT FEES *in* ILLINOIS

When municipalities and counties grow in population, there is demand from local governments for more revenue for municipal and school funding.

Although residential and commercial development produces long-term economic benefit to the entire community, municipalities often look to developers to help offset the perceived cost of that growth. These dollars are collected as an “exaction” on the developer or what’s commonly called an impact fee on new development.

Impact fees are imposed on new development, ostensibly to defray the cost of expanding or building new infrastructure. Depending on market conditions, impact fees fall completely on developers or are passed on to final property buyers. Who bears the brunt of these fees is an empirical issue. In either case, impact fees raise the price of housing.

On average, impact fees levied on home buyers are not inconsequential: [According to the 2012 National Impact Fee Survey by Duncan Associates](#), average total fees charged by jurisdictions surveyed in 2012 are \$11,583 for single-family units. School impact fees are the highest, followed by park and road impact fees. Police, fire and library fees, on the other hand, tend to be relatively low. In many Illinois municipalities, the average amount of fees can be much higher than that. Although local municipalities often argue that levying impact fees is necessary to cover the cost of building or improving utility and road infrastructure necessitated by new development, impact fees oftentimes are used to fund a wider array of services, such as police protection, parks, libraries and schools.

For the past 40 years, impact fees have been most prevalent in suburban Chicago and the collar counties. More recently, impact fees have been enacted in other parts of the state, particularly in the Metro-East region (southwestern Illinois). While those in the development community believe that development should “pay its own way,” and that growth necessitates improvements and additions in certain infrastructure components, the Illinois Association of REALTORS® also recognizes that growth brings economic benefits through increased jobs and the expansion of the municipal tax base.

With each new home that is built, there are new property tax payments, and a portion of those payments go toward infrastructure improvement costs (new school buildings or additions to existing school buildings, park and library expansions, etc.).

In addition to the property tax revenue that comes directly from owners of the new housing, there is the enhanced property tax base that results from commercial/retail development that would not exist were it not for new homeowners in the community.

For those governments that already impose impact fees, a review of land values is probably necessary, especially after the 2007-2009 Recession. Land values are an important part of

determining the actual amounts of impact fees. To use valuations that were ordained prior to the recession would result in an inflated and unfair impact fee.

IMPACT FEES: What is authorized by state law?

These laws were enacted in the 1960's and 1970's and since their enactment, there have been several court cases which further define what is permissible for school, park and library impact fees.

Impact Fees for Schools, Parks and Libraries

A municipality's power to enact an impact fee generally stems from the Illinois Municipal Code [65 ILCS 5/11-12-5]. This section grants municipal plan commissions the power to adopt comprehensive plans that include reasonable requirements for locating, among other things, school grounds. The law goes on to say that a school district may request that the municipality and/or county consider a plan for "school land donations." The law defines "school land donations" as "a donation of land for public school purposes or a cash contribution in lieu thereof, or a combination of both." The statute also makes clear that cash donations, or impact fees, can be used for construction of school buildings or other infrastructure necessitated by new development. This same statutory authority regarding land/cash donations exists for libraries and park districts.

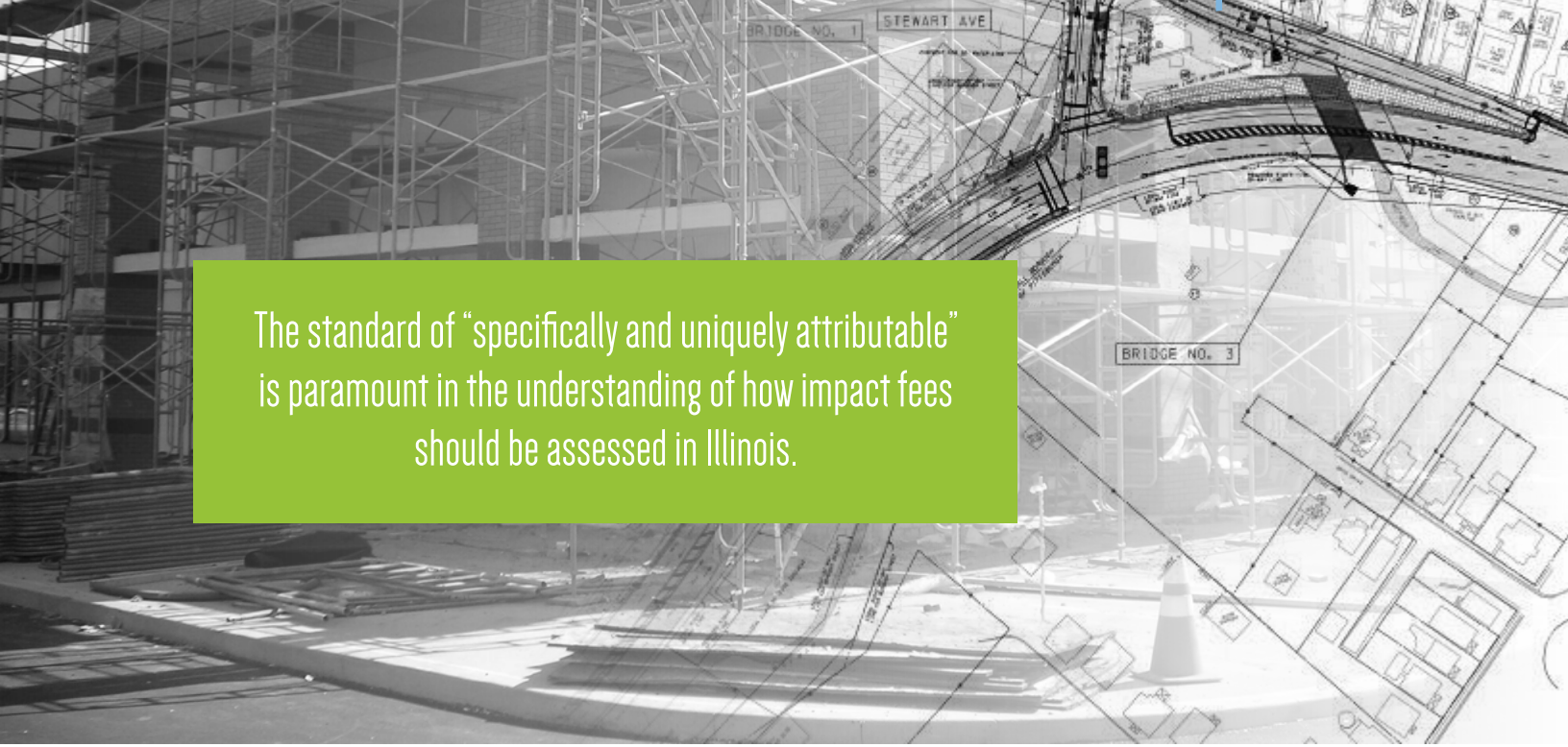
Impact Fees for Roads

The Road Improvement Impact Fee Law, 605 ILCS 5/5-901 et. seq., passed in 1989, provides a comprehensive scheme for enactment of transportation impact fee ordinances in counties with a population over 400,000 and all home rule municipalities. Section 904 of the law provides that an impact fee "shall not exceed a proportionate share of costs incurred by a unit of local government which are specifically and uniquely attributable to the new development paying the fee." Id. at 31, citing 605 ILCS 5/5-904. This law also requires the creation of an Impact Fee Advisory Committee before road impact fees are required through a local ordinance.



CASE LAW:

What have Illinois courts said about impact fees?



The standard of “specifically and uniquely attributable” is paramount in the understanding of how impact fees should be assessed in Illinois.

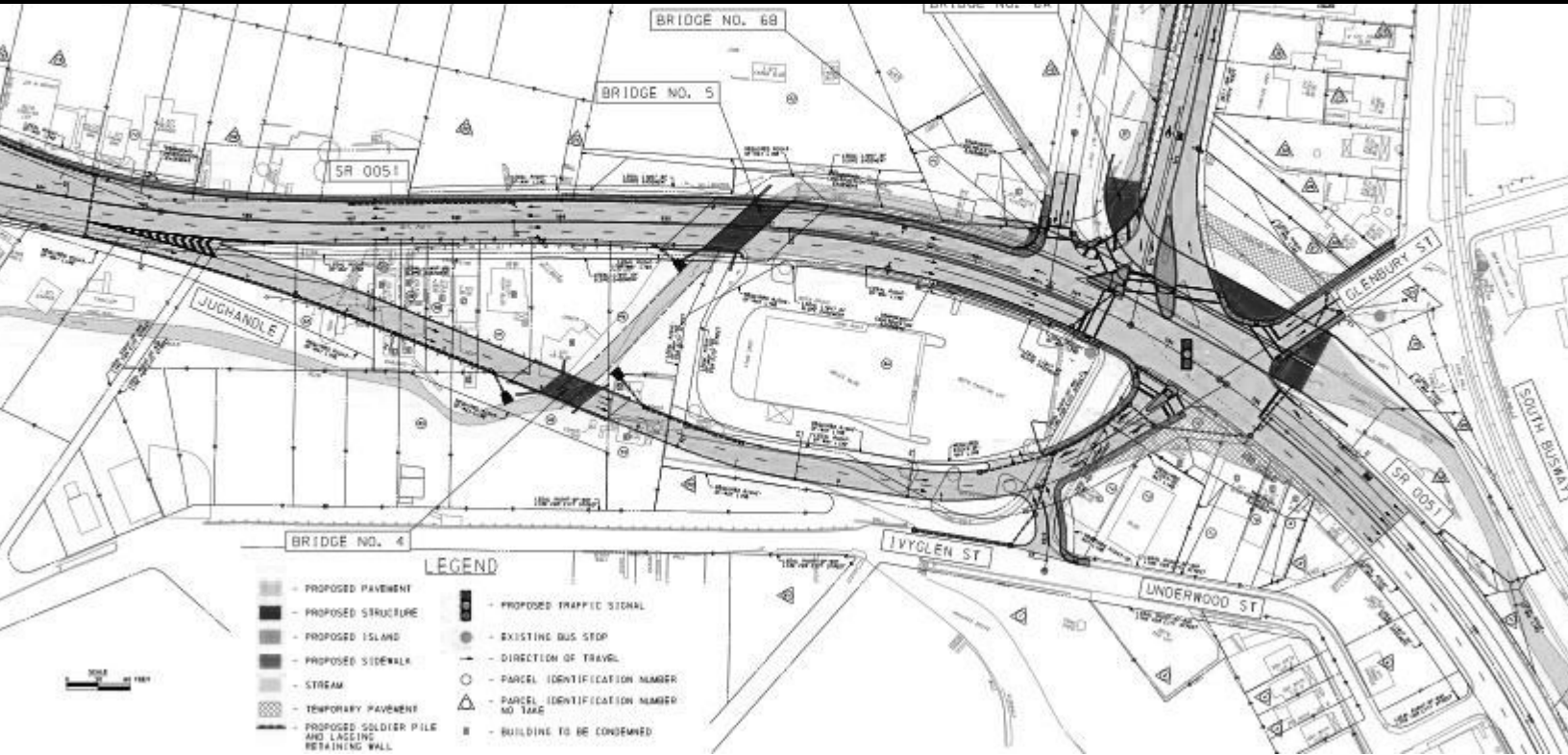
*The most important Illinois court case on impact fees is the landmark 1977 Illinois Supreme Court case, **Krughoff vs. the City of Naperville.***

In the Naperville case, the Illinois Supreme Court revisited earlier Illinois court decisions and stated that land dedications were authorized by the Municipal Code and that those dedication requirements that were proportionate to the needs specifically and uniquely attributable to the developer’s activities did not violate the state constitution. Further, the Court dismissed an equal protection argument based on the city’s failure to apply dedication requirements to commercial and industrial property; in the Court’s opinion there was a rational distinction between residential and the other two types of developments.

In decisions prior to and after Krughoff, the standard of “specifically and uniquely attributable” is paramount in the understanding of how impact fees should be assessed in Illinois.

Recently, Illinois courts have applied the “specifically and uniquely attributable” standard to other challenges to impact fees or dedication requirements.

In Northern Illinois Home Builders Association, Inc. v. The County of DuPage (1995), the court reviewed a DuPage County ordinance to collect transportation impact fees from new developments. In this case, the Illinois Supreme Court defined “specifically and uniquely attributable” to mean, “that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by a road improvement. Each new development paying impact fees used to fund a road improvement must receive a direct and material benefit from the road improvement constructed with the impact fees paid.”



Public Policy Implications of the Court Decisions

This standard of “specifically and uniquely attributable” and the Court’s clarifying definition of that term have clear implications for public policy-makers.

- ▶ **Local governments seeking to impose impact fees must justify the imposition of any fee** by demonstrating that the amount of the fee is directly related to the cost of the infrastructure needs caused by the new development.
- ▶ **Revenue from impact fees cannot be used to pay for ongoing provision of public services.** Revenue from impact fees should be dedicated for the provision of the infrastructure that motivated the fees in the first place.
- ▶ **Local governments should try to determine just how much new development pays for itself** in order to ensure that developers are not paying more than their proportionate share of the local government’s infrastructure costs.

Types of Impact Fees

As was noted in the earlier section on State Law,

impact fees for schools and parks are based on the statute which gives municipalities and counties the authority to require a land donation or cash in lieu of land from developers. Therefore, impact fee ordinances attempt to determine the amount of land that is needed for the school or park district in order to serve the population that will emerge from newly-constructed homes in the districts' jurisdictions. Impact fees are usually based on a formula applied to all new houses, often based on characteristics of the house. For example, the number of bedrooms is taken as a proxy for the number of children that might live in the house and this proxy is used to levy school-related impact fees.

Schools

The typical school impact fee formula will make projections on the number of acres of land that is needed for the school children who will reside in the new homes. That number of acres is then multiplied by the fair market value of an acre of land in order to get a cash value for the calculation of the per-home impact fee.

Quite often these formulas are flawed for a number of reasons:

- ▶ The fair market value of land is over-stated.
- ▶ The per-home student projection is over-stated.
- ▶ The amount of projected school space needed for the new students is over-stated.

With these over-statements, the end result is that the fees are excessive and do not accurately reflect the developer's proportionate share of the costs of the school district's spatial and capital needs.

Parks

Impact fees for parks typically utilize a similar formula except that the projections are based on the total number of occupants in a new home since all occupants—not just school-age children—are potential users of park district services. Similar to school fees, the focus is on the additional space or land that is needed for the new residents.

Much like the school impact fees that are over-stated or inflated, some park impact fees utilize a formula which attempts to exact more from the developer than is the developer's proportionate share. For example, a park district which currently has 8 acres of park district land per 1,000 persons in existing population may attempt to enact an impact fee ordinance which states that 12 acres per 1,000 new residents is necessary. This is inconsistent and results in an inflated impact fee—a fee that is not consistent with the “specifically and uniquely attributable” standard described earlier.



Impact on Development Costs

Roadway Impact Fees

The key to developing an optimal road impact fee is diligent analysis of transportation studies integrated into the existing transportation grid. The condition of the existing roads before the fees take effect is an important part of that analysis. Remember that road impact fees may only be used for improvements that are specifically and uniquely attributable to developments paying the fee.

When creating a road impact fee policy...

- ▶ The traffic load of the surrounding roads and intersections near a proposed development must be evaluated.
- ▶ Reliable data must be collected to support any land use assumptions.

An important and relevant issue in any consideration of impacts fees is who ultimately bears the increase in development costs. While the fees imposed are imposed directly on developers, research suggests that developers bear little of the actual burden in a competitive housing construction market. While some of these costs may be shifted “backwards” from the developer to the owners of undeveloped land, new home purchasers likely bear most of the additional costs through higher housing prices. This dynamic will vary depending upon the particular community. In areas that are growing and are desirable places to live, any increase in the development costs can be more easily passed on to consumers. Growth and desirability will tend to introduce a degree of inelasticity in the demand for housing, especially new construction, and this inelasticity allows costs to be shifted forward to consumers. If impact fees are imposed in non-growing, less desirable areas, however, there is greater risk that builders and developers will not be able to recover their increased costs and will have to absorb the fees or simply choose not to develop housing.

To review the
2012 National Impact Fees survey, go to:
www.impactfees.com/publications%20pdf/2012_survey.pdf



What should a fair impact fee include?

A fair and equitable impact fee policy should incorporate the following principles:

The standard of “specifically and uniquely attributable” must be closely adhered to. Local governments must justify the link between the amount of the fee and the impact created by the new development. That justification should be done with plans, studies and solid data about population projections. Population projections should be re-visited at least every five years to ensure that the development community is paying the appropriate amount in fees.

Impact fees cannot be used for operational costs of schools, libraries or park districts. Fees can only be used for land acquisition costs and capital expenditures (“bricks and mortar”).

The spatial needs of a school district should closely reflect the Illinois State Board of Education and Capital Development Board’s recommendations on land (acreage) donation. The acreage requirements are as follows:

- ▶ 5 acres plus 1 acre for every 100 students of projected enrollment for elementary schools.
- ▶ 20 acres plus 1 acre for every 100 students of projected enrollment for junior high schools and middle schools.
- ▶ 30 acres plus 1 acre for every 100 students of projected enrollment for high schools.

School enrollment projections should be considered. If the student population from existing homes (not new construction) is declining, that should be considered in any new impact fee requirement or increase.

Administrative Appeals. Local governments should provide options for administrative appeals of a determination of the amount of impact fees for a particular project.

If you already have impact fees:

Local governments that currently impose impact fees should consider declining enrollments in the schools and stable population numbers in general in their jurisdictions. Illinois’ actual population has declined slightly in recent years. Local officials may want to ask themselves, “Are impact fees even necessary?” At a minimum, existing impact fees should be re-examined. It is important to re-evaluate the need and calculations of these once-valid fees.

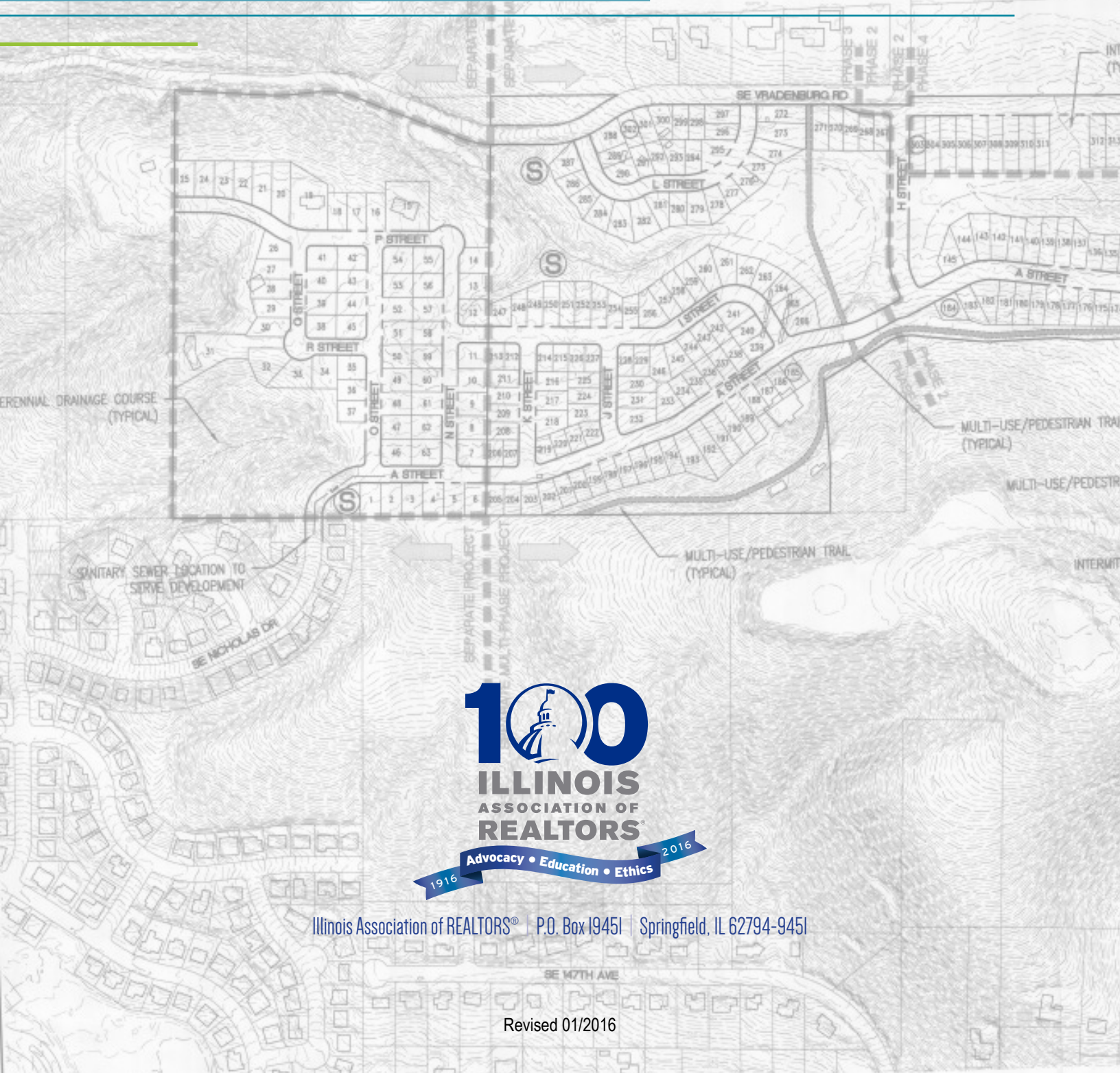
For those jurisdictions that already have impact fees, a review of land values may be necessary, especially after the 2007-2009 Recession. As explained in the prior section of this brochure, land values are an important determinant in the amounts of the impact fees that are assessed. To use pre-recession numbers and per-acre valuations would result in an inflated and unfair impact fee.



Consider the Impact on Affordable Housing

Local governments also want to keep in mind that impact fees place a disproportionate burden on lower-income households. For example, suppose a household with an annual income of \$34,500 is buying a \$100,000 house with a \$90,000 mortgage at 8.0 percent. A \$3,700 increase in house price due to an impact fee would require an increase of 3.7 percent in down payment and \$360 more annually in house payments, which is 1.0 percent of the family's income. In a household with an income of \$69,000 buying a \$200,000 house with the same mortgage terms, the same rise in price would cause the same increase in annual payments; an increase equaling only 0.5 percent of that family's income.

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