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Chicago's Linked Development Fund: The Legality of Imposing an Exaction Fee on Large-Scale Downtown Office Developments

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The city of Chicago, like other major cities, is trying to balance its growth of office developments with its need for more low and moderate income housing.[1] Because new large-scale downtown office developments may create new jobs and bring new households into a city, Chicago believes that its new downtown developments strain the already minimal supply of affordable housing.[2] In response to this concern, Chicago seeks to impose an exaction fee[3] on new large-scale downtown office developments and use the proceeds to create low and moderate income housing.

This note examines the legality of Chicago's attempt to impose the exaction fee. Part I discusses the factual assumptions that Chicago asserts to justify the imposition of the exaction fee. Part II addresses the strength of these justifications in light of Chicago's statutory authority to regulate land use. Part III analyzes Chicago's potential attempt to characterize the exaction fee as a tax and impose the fee under its home rule taxing power. Part IV concludes that, while Chicago lacks the statutory authority to impose the exaction fee, the city's home rule taxing power permits the city to impose the fee.

I. Chicago's Justification for Imposing an Exaction Fee

Chicago is faced with a neighborhood housing shortage. In 1980 Chicago had a housing vacancy rate of 6.9 percent. By 1983, however, Chicago's housing vacancy rate was 3.6 percent.[4] The prime cause of this shortage is that the new housing starts cannot keep pace with the housing lost through demolition and abandonment.[5] A contributing cause of this shortage, Chicago argues, is large-scale downtown office developments. Arguably, the creation of new large-scale downtown office developments generates service sector employment growth.[6] While Chicago's housing stock is decreasing, Chicago's service sector employment

1 *See, e.g.*, INCLUSIONARY ZONING MOVES DOWNTOWN, (D. Merriam, D. Brower & P. Tegeler eds. 1985); Diamond, *The San Francisco Office Housing Program: Social Policy Underwritten By Private Enterprise*, 7 HARV. ENVTL. L. REV. 449 (1983); McCarron, *Loop Rides Fast Track In Growth*, Chi. Tribune, Oct. 21, 1986, at 1, col. 3.

2 *See infra* notes 4-11 and accompanying text.

3 An exaction fee is a charge imposed to regulate an activity under a municipality's police power or to raise revenue under a municipality's taxing power. *See* Lamere v. City of Chicago, 391 Ill. 2d 552, 563, 63 N.E.2d 863, 868 (1945).

4 The Advisory Committee on Linked Development, Draft Report, 33 (1985) [hereinafter cited as Draft Report]. Copy on file with the NOTRE DAME LAW REVIEW.

5 *Id.* ("While new housing starts average 5,034 units per year, the city has been losing an estimated 6,127 units per year through demolition, abandonment, and other causes.").

6 *Id.* at 21.

rate is increasing.[7] This growth will create the need in Chicago for an estimated 2,800 to 5,600 new households per year over the next twelve years.[8]

By generating service sector employment growth and relying on Chicago's neighborhoods for sixty-one percent of their workers,[9] large-scale downtown office developments place additional pressure on Chicago's already minimal supply of neighborhood housing.[10] Thus, the city of Chicago argues that it is justified in imposing an exaction fee on new downtown office developments because these developments contribute to Chicago's housing shortage.[11]

To alleviate the housing shortage, Chicago seeks to create a "Linked Development Fund" to help rebuild Chicago's neighborhoods. A specific source for this fund is the exaction fee.[12] Chicago would impose the exaction fee on all new downtown office developments that are over 50,000 square feet. The program mandates that the developers pay two dollars per square foot when the city issues the building permit and for the next four years on the annually occupied space.[13] The fee is expected to generate forty million dollars over the next five years[14] and the city will limit the use of the proceeds to the creation of low and moderate income housing in Chicago's neighborhoods.[15]

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7 *Id.* at 33. The service sector employment rate has been increasing at an average of 2% per year for the last fourteen years.

8 *Id.* at 34.

9 *Id.* at 7 (citing ILLINOIS BUREAU OF EMPLOYMENT SECURITY, WHERE WORKERS WORK (1983)).

10 *Id.* at 21, 33. Chicago fails, however, to consider that service sector employment may be increasing, not because of development, but because of Chicago's shift from a manufacturing society to a service society. *See infra* notes 46-49 and accompanying text.

11 The Draft Report prepared by the Advisory Committee on Linked Development concludes that:

> [S]ervice sector jobs may have contributed to housing demand and therefore it is possible to make an argument for a housing exaction from office buildings. The paper does not attempt to make the type of detailed study that would be necessary to defend an exaction in the courts; consequently, it does not make a judgment of whether the evidence would be strong enough to stand up to a legal challenge in Illinois courts.

Id. at 34. Even if a detailed study could support everything that the Draft Report asserts, it is still unlikely that a court would uphold the exaction under Illinois law. *See infra* notes 46-51 and accompanying text.

12 The exaction fee is expected to generate $4.8 million annually. Chicago has established four other sources for the fund: (1) a real estate transfer tax on land trusts which is expected to generate $4 million annually; (2) a use tax on office and commercial space which is expected to generate $16.98 million annually; (3) changes in the State tax codes for insurance companies which are expected to generate from $500,000 to $1 million annually; and (4) zoning incentives which are expected to generate an indeterminable amount. Draft Report, *supra* note 4, at 16. The city will appropriate money from this fund to create low and moderate income housing in Chicago's neighborhoods and to improve and expand the city's economic base by funding projects that provide employment opportunities for low and moderate income residents. *Id.* at 9, 10.

13 *Id.* at 21.

14 *Id.* This projection, however, assumes a conservative thirty-six month lease-out period for the buildings to become occupied. Thus, construction in 1986 would yield $4.8 million at the time of the building permit, and then yield $1.6 million in 1988 on the annually occupied space, $3.2 million in 1989, and $4.8 million in 1990.

15 The Draft Report acknowledges that if the exaction fee is to withstand legal scrutiny, the city must only use the proceeds from the exaction fee to alleviate the housing shortage. *Id.*

II. Statutory Power To Regulate Land Use

A. *Statutory Power in General*

Actions challenging the legality of an exaction fee usually involve challenges to subdivision exactions. Generally, state legislatures grant their municipalities the power to require a developer to dedicate land, or money in lieu of land, to meet the needs created by the influx of people into the new development when such needs would not exist but for the development.[16] States differ, however, on the standards that justify mandatory dedication. Some states only require a "reasonable relation" between the need created and the exaction demanded.[17] This test affords great deference to the local legislature and puts a heavy burden on the developer to show the absence of a reasonable relation.[18] On the other hand, other states require that the need created be "specifically and uniquely attributable" to the developer's activity.[19] This test does not grant deference to the local legislature and places a heavy burden on the legislature.[20]

B. *Statutory Power in Illinois*

Illinois municipalities have statutory authority to impose subdivision exactions.[21] The statute authorizes municipalities to establish planning commissions and grants the planning commissions the power to exact

16 *See* Wald Corp. v. Metropolitan Dade County, 338 So. 2d 863, 867 (Fla. App. 1976) ("It is eminently reasonable, therefore, to allow the municipality to impose certain conditions upon the developer so that it may provide for the needs of persons who would not otherwise have been a local concern."). *See also* Jordan v. Village of Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 447 (1966); Pioneer Trust v. Village of Mount Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

17 *See, e.g.*, Ayres v. City Council of Los Angeles, 34 Cal. 2d 31, 207 P.2d 1 (1949); Krieger v. Planning Comm'n, 224 Md. 320, 167 A.2d 885 (1961); Brous v. Smith, 304 N.Y. 164, 106 N.E.2d 503 (1952).

18 *Wald*, 338 So. 2d at 866 ("The *Ayres* standard of 'reasonable relation' puts a heavy burden on the developer to show that the required dedication bears no relation to the general health, safety and welfare."). *See also* Collis v. City of Bloomington, 310 Minn. 5, 246 N.W.2d 19 (1976).

19 Rosen v. Village of Downers Grove, 19 Ill. 2d 448, 453, 167 N.E.2d 230, 233-34 (1960) ("the developer of a subdivision may be required to assume those costs which are specifically and uniquely attributable to his activity and which would otherwise be cast upon the public."). *See also* Aunt Hack Ridge Estates, Inc. v. Planning Comm'n, 27 Conn. Supp. 74, 230 A.2d 45 (1967); *Pioneer Trust*, 176 N.E.2d 799 (1961).

20 *Wald*, 338 So. 2d at 866 ("*Pioneer Trust*, on the other hand, shifts the burden of proving the validity of the subdivision exactions to the municipality; mandatory dedication is only to be upheld where the discerned needs are directly and solely attributable to the proposed subdivision."). This heavy burden has forced many states to reject Illinois' strict requirement. As the *Jordan* court stated:

> We deem [the *Pioneer Trust* test] to be an acceptable statement of the yardstick to be applied, provided the words "specifically and uniquely attributable to his activity" are not so restrictively applied as to cast an unreasonable burden of proof upon the municipality which has enacted the ordinance under attack. In most instances it would be impossible for the municipality to prove that the land required to be dedicated for a park or a school site was to meet a need solely attributable to the anticipated influx of people into the community to occupy this particular subdivision. On the other hand, the municipality might well be able to establish that a group of subdivisions [create a need specifically and uniquely attributable to them].

28 Wis. 2d at 609, 137 N.W.2d at 447. *See also Collis*, 310 Minn. at 12, 246 N.W.2d at 23. These cases, while illustrating the heavy burden faced by municipalities, also illustrate the implicit requirement that Illinois exactions must satisfy a need specifically and uniquely attributable to a *particular* developer. *See infra* note 35 and accompanying text.

21 ILL. REV. STAT. ch. 24, paras. 11-12-4 to 12.

reasonable requirements for certain defined public improvements.[22] Case law interpreting this statute has held that municipalities may require a developer to dedicate land, or money in lieu of land,[23] to meet the needs "specifically and uniquely attributable" to the developer's activity.[24] Even though case law surrounding this statute has developed out of land use regulation through subdivision plat approval, the principles generated by this case law should apply, with all their substantive force, to the analogous situation of land use regulation through the issuance of building permits.[25]

The first case to interpret the statute was *Rosen v. Village of Downers Grove*.[26] In *Rosen*, the Illinois Supreme Court invalidated a village ordinance that required subdividers to dedicate land, or money in lieu of land, for "educational purposes."[27] Although mandatory dedication was not an issue in *Rosen*, the court cited a California case in which mandatory dedication was an issue, stating that "[t]he provisions of the statute . . . appear to be based upon the theory that the developer of a subdivision may be required to assume those costs which are *specifically and uniquely attributable to his activity and which would otherwise be cast upon the public* . . . ."[28]

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22 The statute enables municipalities to grant planning commissions the power to adopt a plan that:

> [M]ay be implemented by ordinances (a) establishing reasonable standards of design for subdivisions and for resubdivisions of unimproved land and of areas subject to redevelopment in respect to public improvements as herein defined; (b) establishing reasonable requirements governing the location, width, course, and surfacing of public streets and highways, alleys, ways for public service facilities, curbs, gutters, sidewalks, street lights, parks, playgrounds, school grounds, size of lots to be used for residential purposes, storm water drainage, water supply and distribution, sanitary sewers, and sewage collection and treatment.

Id. at para. 11-12-5. Arguably, since creating low and moderate income housing does not fall within the list of statutorily defined public improvements, Chicago should lack the statutory authority to impose the exaction fee for such a purpose. The city, however, may argue that its power to regulate land use stems from its broad home rule police power and not the narrow statutory authority. *See infra* note 53.

23 When the statute was first considered in *Rosen*, 19 Ill. 2d at 454, 167 N.E.2d at 234, the court held that the statute did not authorize a municipality to exact money in lieu of land. However, in Board of Ed. v. Surety Developers, 63 Ill. 2d 193, 202, 347 N.E.2d 149, 154 (1975), the court found, without giving a detailed explanation, that municipalities have the statutory authority to exact money in lieu of land.

24 *See supra* note 19.

25 *See Surety Developers*, 347 N.E.2d at 153 ("[t]he elevation of the *Rosen* test to a constitutional basis in *Pioneer* [*Trust*] applies to land dedication requirements regardless of the legislation involved."). *See also* Southern Pac. Co. v. City of Los Angeles, 242 Cal. App. 2d 38, 51 Cal. Rptr. 197 (1966), *cert. denied*, 385 U.S. 647 (1967) (building permit); Diamond, *supra* note 1 at 471 ("the doctrine has also been applied to applications for other kinds of changes in land use, such as building permits, zoning variances, and rezonings").

26 19 Ill. 2d 448, 167 N.E.2d 230 (1960). *See supra* notes 19 & 23.

27 The court stated two reasons to support its holding. First, the term "educational purposes" was broader than the statute's use of "school grounds." Second, the statute did not authorize the municipality to exact money in lieu of land. 167 N.E.2d at 234. *But see Surety Developers*, *supra* note 23 (municipalities have the statutory authority to exact money in lieu of land).

28 19 Ill. 2d at 453, 167 N.E.2d at 233-34 (emphasis added). The court also stated that:

> The distinction between permissible and forbidden requirements is suggested in Ayres v. City Council of Los Angeles which indicates that the municipality may require the developer to provide the streets which are *required by the activity within the subdivision but cannot require him to provide a major thoroughfare, the need for which stems from the entire community*.

Id. at 234 (emphasis added; citation omitted).

In *Pioneer Trust and Savings Bank v. Village of Mount Prospect*,[29] the Illinois Supreme Court faced the issue of mandatory dedication. In *Pioneer Trust*, the court adopted *Rosen*'s "specifically and uniquely attributable" test, and the principles enunciated in *Rosen*, to invalidate a village ordinance that required a subdivider to bear the sole financial burden of dedicating school and recreational land. The *Pioneer Trust* court determined that, even though the subdivider's activity would "aggravate the existing need" for additional school and recreational facilities, the need for the additional facilities was the "result of the total development of the community" and therefore the need was not "specifically and uniquely attributable" to the developer's activity.[30] Accordingly, the court stated that the village could not place on the developer, as his "sole financial burden," the cost of meeting the need for more school and recreational facilities.[31]

In *Board of Education v. Surety Developers*,[32] the Illinois Supreme Court explained the holding in *Pioneer Trust*, stating that Mount Prospect's "dedication requirement was [invalid] simply [because it was] not limited to the *portion* of the school needs specifically and uniquely attributable to the developer's activity."[33] By interpreting *Pioneer Trust* in this manner, the court established that it will uphold municipal exactions only if a discerned need is specifically and uniquely attributable to a developer's activity and if the exaction is proportioned to the need created by the developer. Indeed, the *Surety Developers* court upheld the challenged municipal exaction because it found that the need for more school facilities was specifically and uniquely attributable to the developer's activity and that "the conditions imposed were clearly reasonable in light of defendant's *contribution* to the creation of the school problem."[34]

29 22 Ill. 2d 375, 176 N.E.2d 799 (1961).

30 *Id.* at 381, 176 N.E.2d at 802. However, the *Rosen* court's interpretation of *Ayres*, and *Pioneer Trust*'s subsequent reliance on *Rosen*'s interpretation of *Ayres*, is incorrect. *See Wald Corp*, 338 So. 2d at 866, where the court stated:

> But while *Ayres* ruled that mandatory dedication requirements would be upheld where "reasonably related" to municipal needs, *Pioneer Trust* ruled that such requirements would be invalid unless "specifically and uniquely attributable" to the subdivider's activity.
>
> Although the *Pioneer Trust* decision cited *Ayres* as precedent, it would seem that the two cases proposed entirely different standards for the review of subdivision dedication requirements.

Regardless of *Pioneer Trust*'s correct or incorrect interpretation of *Ayres*, the fact remains that Illinois case law is based upon that foundational interpretation. Whereas California case law developed a requirement of "reasonableness," Illinois case law developed a stricter requirement of "specific and unique attributability."

31 22 Ill. 2d at 381, 176 N.E.2d at 802.

32 63 Ill. 2d 193, 347 N.E.2d 149 (1975).

33 *Id.* at 203, 347 N.E.2d at 154 (emphasis added).

34 *Id.* at 204, 347 N.E.2d at 154 (emphasis added). *See also* Krughoff v. City of Naperville, 68 Ill. 2d 352, 358-59, 369 N.E.2d 892, 895 (1977) ("Here the evidence shows and the circuit court found that the required contributions of land, or money in lieu of land, were uniquely attributable to and fairly proportioned to the need for new school and park facilities created by the proposed developments.").

C. *Analysis of Illinois Law*

1. The Specifically and Uniquely Attributable Requirement

Illinois law will only allow a municipality to burden a developer to the extent that the exaction sought is fairly proportioned to the need deemed specifically and uniquely attributable to the developer's activity.[35] Thus, two interrelated principles are applicable to any ordinance requiring mandatory dedication: (1) specific and unique attributability to a particular developer, and (2) proportionality.[36] The crucial link among these principles is the specifically and uniquely attributable requirement—unless a need is deemed to be specifically and uniquely attributable to a particular developer's activity, the question of proportionality is not reached.

The issue arises concerning the type of connection a court will require before it finds that a need is specifically and uniquely attributable to a developer's activity. The court in *Pioneer Trust* held that the record did not "establish that the need for [school and recreational facilities] is one that is specifically and uniquely attributable to the addition of the subdivision . . . ."[37] The court made two findings to support its conclusion. First, the court found that Mount Prospect had an existing need for additional school and recreational facilities stemming from the "total development of the community."[38] Second, the court found that the developer's addition of 250 residential units would only "aggravate the existing need for additional school and recreational facilities."[39]

In *Surety Developers*, the court held that the record established that the need for school facilities was specifically and uniquely attributable to the developer's activities. The court made two findings to support its con-

35 Moreover, implicit in Illinois case law is the requirement that the exaction will be upheld only if the need is specifically and uniquely attributable to a particular developer, and not to a group of developers. The language and reasoning of *Pioneer Trust* has led other state courts to conclude that if a municipal exaction is to survive Illinois' specifically and uniquely attributable test, the municipality must show that the need is directly and solely attributable to a particular developer's activity. *See supra* note 20; Krughoff v. City of Naperville, 41 Ill. App. 3d 334, 342, 354 N.E.2d 489, 497, *aff'd.*, 68 Ill. 2d 352 (1976) (appellate decision) (the *Pioneer Trust* court held "that the record did not establish that the need for recreational and educational facilities was specifically and uniquely attributable to the addition of the particular subdivision . . . ."); and the supreme court decision in *Krughoff*, 68 Ill. 2d at 356, 369 N.E.2d at 894 (dedication requirements were individually applied and based on projections of how many people would live in each particular subdivision).

36 *See* Plote, Inc. v. Minnesota Alden Co., 96 Ill. App. 3d 1001, 1006, 422 N.E.2d 231, 235 (1981), where the court stated that "[t]he test developed by the supreme court to distinguish between impermissible and permissible conditions is twofold: the contribution exacted must be 'specifically and uniquely attributable' to the developer's activity [citation], and must be proportioned to the needs created by the development."

37 22 Ill. 2d at 381, 176 N.E.2d at 802.

38 *Id.*

39 The court stated that:

> The agreed statement of facts shows that the present school facilities of Mount Prospect are near capacity. This is the result of the total development of the community. If this whole community had not developed to such an extent or if the existing school facilities were greater, the purported need supposedly would not be present. Therefore, on the record in this case the school problem which allegedly exists here is one which the subdivider should not be obliged to pay the total cost of remedying, and to so construe the statute would amount to an exercise of the power of eminent domain without compensation.

Id. at 381, 176 N.E.2d at 802.

clusion. First, the court distinguished *Pioneer Trust* by finding that the developer's subdivision "dramatically changed the character of the surrounding area" because the subdivision was not an addition "to an existing municipality [as in *Pioneer Trust*] but the commencement of a new one."[40] Second, the court found that "nearly 98% of the students attending the schools subsequently built in defendant's development lived inside the development."[41]

Pioneer Trust and *Surety Developers*, unfortunately, are the only two Illinois cases that justify their holding with a factual basis.[42] The rest of the cases that have dealt with the specifically and uniquely attributable test justify their holdings with the plain language of the test. As such, the test, as a legal standard, does not derive its substantive impact from judicial interpretations, but rather from its own plain language. The test, simply stated, demands a causal relationship—a municipality has to point to a particular development and show that the development is the specific cause of the newly discerned need.[43]

2. Analysis of Chicago's Specifically and Uniquely Attributable Argument

Chicago seeks to establish the causal link with several arguments. First, large-scale downtown office developments generate service sector employment growth. Second, the service sector employment growth translates into an estimated 9,200 new jobs annually over the next twelve years. Third, considering that downtown office developments rely on Chicago's neighborhoods for 61 percent of their workers, it is estimated that the employment growth will create between 2,800 and 5,600 new households annually for the next twelve years. Fourth, the increased household growth, caused by the increased service sector employment growth, which in turn is caused by large downtown developments, strains Chicago's already minimal supply of affordable housing. Thus, the city contends that the need for additional housing is specifically and uniquely attributable to large-scale downtown office developments.

Even assuming that a court would accept Chicago's arguments that the need for more housing is specifically and uniquely attributable to groups of office developments, as opposed to particular developments,[44] Chicago fails to establish the specific and unique causal relationship.[45] This is true for three reasons. First, the increase in service sector em-

40 *Surety Developers*, 63 Ill. 2d at 203, 347 N.E.2d at 154.

41 *Id.*

42 The following nine Illinois cases have considered the specifically and uniquely attributable test: *Krughoff*, 68 Ill. 2d 352, 369 N.E.2d 892 (1977); *Surety Developers*, 63 Ill. 2d 193, 347 N.E.2d 149 (1975); People v. City of Lake Forest, 40 Ill. 2d 281, 239 N.E.2d 819 (1968); *Pioneer Trust*, 22 Ill. 2d 375, 176 N.E.2d 799 (1961); *Rosen*, 19 Ill. 2d 448, 167 N.E.2d 230 (1960); Plote v. Minnesota Alden Co., 96 Ill. App. 3d 1001, 422 N.E.2d 231 (1981); Board of Ed. v. Green Valley Builders, Inc., 40 Ill. App. 3d 812, 352 N.E.2d 306 (1976); Department of Public Works and Buildings v. Exchange Nat'l Bank, 31 Ill. App. 3d 88, 334 N.E.2d 810 (1975); Brown v. City of Joliet, 108 Ill. App. 2d 230, 247 N.E.2d 47 (1969).

43 *See Wald Corp*, 338 So. 2d at 867 (the court recognized "the cause and effect approach advocated by *Pioneer Trust* . . . .").

44 *See supra* notes 20 & 35 and accompanying text.

45 *See supra* note 11.

ployment growth is more than offset by the decrease in manufacturing jobs. Between 1973 and 1983, Chicago lost an average of 21,600 manufacturing jobs per year while the service sector had a growth rate of only 5,000 jobs per year.[46] Thus, during this time frame, Chicago experienced a net loss of jobs despite the service sector employment growth.[47] Second, this net loss will continue in future years because the estimated continued growth in the service sector employment rate is more than offset by Chicago's pool of unemployed workers. In 1984 there were 193,000 unemployed Chicagoans, while it is estimated that from 1983 until 1995 the service sector will only create 9,200 new jobs per year.[48] Therefore, even in the future there will be a net loss of jobs despite the service sector employment growth. Third, considering the above statistics, it is erroneous for the city to conclude that service sector employment growth will create an estimated 2,800 and 5,600 "new households" annually for the next twelve years. As a result of Chicago's change from a manufacturing based economy to a service based economy, the vast majority of the estimated new households are actually "old manufacturing households" transformed into "new service households."[49] Thus, the need for additional housing is not specifically and uniquely attributable to large-scale downtown office developments because these developments, while generating jobs, are not placing additional pressure on the housing market. The service sector employment growth is offset by the loss of manufacturing jobs and the pool of unemployed workers.

3. Proportionality

Even if Chicago could establish a specific and unique causal relationship, a court could strike down the exaction on the ground that it is not reasonably proportioned to the downtown developers' contribution to the housing problem. Since it is estimated that the service sector employment growth will translate into 2,800 to 5,600 new households annually,[50] the need for this many households is all that the large-scale downtown office developers should be responsible for. Multiplied over the next five years, 28,000 new households, assuming the highest estimate, will be attributed to the service sector growth rate. In the same period, however, Chicago seeks to exact $40 million from large-scale downtown office developments.[51] The question remains then whether $40 million is a disproportionate amount of money to create low and moderate income housing for 28,000 households. If it is, a court should

46 Draft Report, *supra* note 4, at 7, 33. *See also* Mayor's Advisory Committee on Linked Development, Minority Report on The Proposed Exaction Fee, 6 (1985) [hereinafter cited as Minority Report]. Copy on file with the NOTRE DAME LAW REVIEW.

47 Minority Report, *supra* note 46, at 6.

48 Draft Report, *supra* note 4, at 7, 33.

49 This is not to say, however, that the exact households have been transformed from manufacturing households to service households. Rather, as manufacturing households leave the Chicago area to find work elsewhere, new service households take their place to maintain the status quo. *See* Minority Report, *supra* note 46, at 3 and exhibit 1 (Chicago's population is expected to increase by only 0.03% or 1,028 persons between 1980 and 2005).

50 *See supra* note 8.

51 *See supra* note 14.

strike down Chicago's exaction fee as an invalid exercise of the city's police power.[52]

III. Home Rule Powers

A. *The Power to Tax and the Police Power*

Assuming that the enabling statute does not authorize Chicago's attempt to create a linked development fund, the issue arises whether Chicago is authorized to establish such a fund under its home rule powers—the power to tax or the police power.[53] Because Chicago wants to use exaction fees rather than land dedication, it is difficult to determine if the city has to rely on the police power or the power to tax.[54]

In *Lamere v. City of Chicago*,[55] the Illinois Supreme Court distinguished the police power and the taxing power. The court stated that an ordinance enacted under the police power is designed to regulate for the public welfare while an ordinance enacted under the taxing power is not designed to regulate but to raise revenue.[56] The purpose of the exaction fee is not to regulate the construction of new office buildings for the public welfare. Rather, the purpose of the exaction fee is to raise revenue to aid in the construction of low and moderate income housing.[57] Thus, in light of these basic principles, the exaction fee is a tax designed to raise revenue and Chicago's authority to impose the exaction fee on large-scale downtown office developments must stem from its power to tax.[58]

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52 As of this time there are no statistical studies examining the cost of creating 28,000 low and moderate income housing units.

53 In *Krughoff*, 68 Ill. 2d at 360, 369 N.E.2d at 896, the court left open the possibility that a municipality could derive its authority to regulate land use from its home rule police power rather than from an enabling statute.

54 *See* Haugen v. Gleason, 226 Or. 99, 100, 359 P.2d 108, 110 (1961) ("The decision to seek money with which to buy other land which might benefit another subdivision, or the public generally, took the county into the borderland area between the police power and the power to tax.").

55 391 Ill. 552, 63 N.E.2d 863 (1945).

56 *Id.* at 559, 63 N.E.2d at 866.

> The purpose for which the police power may be exercised is for the protection of the lives, health, morals, comfort and quiet of all persons . . . [and an] ordinance enacted under such power must be designed to prohibit or regulate those things which tend to injure the public in such matters. On the other hand, an ordinance which provides for a license and the payment of a license fee without regulatory provisions of any kind is solely a revenue measure and not within the police power.

See also Crocker v. Finley, 99 Ill. 2d 444, 459 N.E.2d 1346 (1984) (a charge referred to by statute as a fee is in reality a tax where it has no relation to services rendered and is assessed to provide general revenue); City of Chicago v. R.X. Restaurant, 369 Ill. 65, 15 N.E.2d 775 (1938); Herb Bros. v. City of Alton, 264 Ill. 628, 106 N.E.2d 434 (1914).

57 The exaction fee is a tax since it is exacted solely for revenue purposes and its payment gives the right to obtain a building permit. *See Lamere*, 391 Ill. at 564, 63 N.E.2d at 868 where the court stated:

> In noting the distinction between the exercises of the two powers, in 33 Am.Jur. p. 340, it is said: "In general, therefore, where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper imposed by virtue of the police power, but where it is exacted solely for revenue purposes and its payment gives the right to carry on the business without any further conditions it is a tax."

58 Other jurisdictions have held that it is a tax if the purpose of the development fee is to raise revenue and not to regulate. *See, e.g.*, Aunt Hack Ridge Estates, Inc. v. Planning Comm'n, 27 Conn. Supp. 74, 230 A.2d 45 (1967); Sanchez v. City of Santa Fe, 82 N.M. 322, 481 P.2d 401 (1971); State Hous. Council v. City of Lake Oswego, 48 Or. App. 525, 617 P.2d 655 (1980); Weber Basis Home

The 1970 Illinois Constitution grants Chicago, as a home rule municipality, broad power to regulate its own affairs.[59] In *Ampersand, Inc. v. Finley*,[60] the Illinois Supreme Court noted that the powers were purposely left without definition so that they would be broad.[61] Moreover, the Illinois Constitution also provides that the "[p]owers and functions of home rule units shall be construed liberally."[62]

B. *Equal Protection and Due Process Challenges*

The state's broad home rule powers, however, are not without limitations.[63] The developers of large-scale downtown office developments could challenge the exaction as violative of the due process and equal protection clauses of the Illinois and United States Constitution. These attacks would probably be unsuccessful.

1. Equal Protection

In *Fiorito v. Jones*[64] the Illinois Supreme Court provided basic equal protection principles concerning taxes. The court noted that the legislature has broad power in defining tax classifications as long as the classifications are reasonable and as long as the classifications bear "some reasonable relationship to the object of the legislation."[65] Moreover, in *Williams v. City of Chicago*,[66] the Illinois Supreme Court further elaborated on the broad legislative power by noting that legislative classifications are presumed valid and that the burden is on the one attacking the classifica-

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Builders Ass'n. v. Ray City, 26 Utah 2d 215, 487 P.2d 866 (1971); Hillis Homes, Inc. v. Snomish County, 97 Wash. 2d 804, 650 P.2d 193 (1982).

59 ILL. CONST., art. VII, § 6(a) provides in relevant part:

> Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

60 61 Ill. 2d 537, 338 N.E.2d 15 (1975).

61 *Id.* at 539, 338 N.E.2d at 17. *See* City of Evanston v. Crete, 85 Ill. 2d 101, 421 N.E.2d 196 (1981); City of Urbana v. Houser, 67 Ill. 2d 268, 367 N.E.2d 692 (1977).

62 ILL. CONST., art. VII, § 6(m). *See* Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 448 N.E.2d 968 (1986).

63 The most general limitation placed upon a municipality's home rule power is found in the language of the very section that grants the power. Section 6(a) of article VII gives municipalities home rule power only over those functions "pertaining to its government and affairs." ILL. CONST., art. VII, § 6(a). This provision should not prevent Chicago from imposing an exaction fee to help fund the construction of low and moderate income housing. Such a fund is in "accordance with the goals attempted to be achieved by the creation of home rule" in that Chicago can address the "unique needs of its residents" through the development of such a fund. *City of Evanston*, 85 Ill. 2d at 113, 421 N.E.2d at 201. *See* City of Urbana v. Paley, 68 Ill. 2d 62, 368 N.E.2d 915 (1977) (city has home rule power to undertake a redevelopment program).

64 39 Ill. 2d 531, 236 N.E.2d 698 (1968).

65 *Id.* at 535, 236 N.E.2d at 702.

> It is well established that the legislature has broad powers to establish reasonable classifications in defining subjects of taxation. It is equally well settled that the legislature may define a general class which is subject to an occupation tax and then specifically remove a subclass, *or it may merely define a subclass without naming the general class*. But regardless of the manner in which the classes to be taxed have been defined, *the classifications must be based upon real and substantial differences between persons taxed and those not taxed, and they must bear some reasonable relationship to the object of the legislation*.

Id. at 535-36, 236 N.E.2d at 701-02 (emphasis added; citations omitted).

66 66 Ill. 2d 423, 362 N.E.2d 1030, *cert. denied*, 434 U.S. 924 (1977).

tion "to negate every conceivable basis which might support it."[67] Thus, equal protection analysis provides that legislative classifications, which are presumed valid, will be upheld if *any* conceivable basis exists to support the classification and if *some* rational relationship exists between the classification and the object of the legislation; equal protection requires only that the classification not be arbitrary or unreasonable.

Chicago's exaction fee should survive an equal protection challenge. First, the classification is not arbitrary because a conceivable basis supports it. That is, the legislature could have found that large-scale downtown office developments, as opposed to downtown residential or neighborhood residential developments, strain Chicago's housing supply. Moreover, the burden is on the developers of the large-scale office developments to negate every conceivable basis which might support the classification.[68]

Second, the classification is not unreasonable because "some" rational relationship exists between the classification (large-scale downtown office developments) and the object of the legislation (the creation of low and moderate income housing). The causal relationship needed, as opposed to the specific and unique causal relationship needed under the land regulation statute, can probably be satisfied by simply showing that large-scale downtown office developments will additionally strain, however slight, Chicago's housing supply. Thus, with the strong presumption supporting the legislative classification, the exaction fee should satisfy equal protection analysis.[69]

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67 *Id.* at 432-33, 362 N.E.2d at 1035.

> [I]t is equally well settled that there is a presumption favoring the validity of classifications made by legislative bodies in taxing matters and that one who attacks them has the burden of proving such classifications to be arbitrary and unreasonable. "The reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any set of facts reasonably can be conceived that would sustain it. The burden therefore rests on one who assails the statute to negate the existence of such facts." . . . "There is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.' '*The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it.*' "

Id. (emphasis added; citations omitted). *See also*, Illinois Gasoline Dealers Assoc. v. Chicago, 141 Ill. App. 3d 976, 981, 491 N.E.2d 112, 116 (1986) ("The reasons justifying the classification need not appear on the face of the statute, and the classification will be upheld if any reasonable basis for the classification can be found.").

68 For example, the developers would have to show that their employment pool either resides in the suburbs or in Chicago neighborhoods with a housing surplus. *See Krughoff*, 68 Ill. 2d at 360, 369 N.E.2d at 896, where the court sustained a dedication requirement for school grounds that applied to residential developments but not to commercial or industrial developments. The court held that the residential developers were not denied equal protection because a rational distinction existed between residential and commercial development. While the *Krughoff* court never expanded upon its holding, the court likely reasoned that residential development strained the existing school system, whereas commercial and industrial development did not place such a strain on the school system.

69 If the developers fail on an equal protection challenge, they could argue that the exaction fee violates the Illinois constitutional requirement of uniformity in taxation. Section 2 of article IX of the 1970 Constitution provides: "In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly." A court, however, should not uphold such a challenge. Section 2 of article IX is not violated as long as the classification of new downtown office developers is reasonable and all developers are treated equally. Chicago will attain uniformity in taxation because all downtown office developers, *i.e.*, the subjects within the class, are charged the same initial fee and all developers are

2. Due Process

The developers could next challenge the validity of the exaction fee under the due process clause. *Boynton v. Kusper*[70] is the most recent Illinois Supreme Court case to consider a due process challenge to a tax statute. In *Boynton*, the court considered the validity of a statute that imposed a tax on those seeking marriage licenses and required the city to use the proceeds to fund a domestic violence shelter. The court found that, while much effort had been expended to show a statistical relationship between marriage and domestic violence,[71] the city did not have a rational basis for imposing the tax on the narrow class of taxpayers.[72] Thus, the court held that "the relationship between the purchase of a marriage license and domestic violence [was] too remote to satisfy the rational relation test of due process."[73]

In reaching its decision the *Boynton* court relied upon *Crocker v. Finley*.[74] In *Crocker*, the Illinois Supreme Court considered the validity of a statute that imposed a tax on those seeking divorce and required the city to use the proceeds to fund a domestic violence shelter. The *Crocker* court invalidated the statute because it violated both the Illinois due process clause and the right to obtain justice freely. First, the *Crocker* court found that there was a disparity in the taxing scheme because those burdened with the tax were not the only ones benefited by the tax.[75] Because no "rational basis for imposing the tax" on the limited class of taxpayers existed, the court held that this disparity was an arbitrary exercise of legislative power which is "violative of due process, as well as equal protection, guaranteed by [the Illinois] Constitution."[76] Second, the court found that the relationship between the domestic violence shelter and the court system was "too remote."[77] The court found that the tax was not related to the operation and maintenance of courts. Thus, the *Crocker* court held that the statute was invalid because the tax interfered with the constitutional right to obtain justice freely.[78]

Although the *Crocker* court had two separate grounds for invalidating the tax statute, the *Boynton* court combined the two grounds into its due process analysis. According to the *Boynton* court, the *Crocker* court found no rational basis for imposing the tax on the narrow class of taxpayers because the relationship asserted between those filing for divorce and those using the domestic violence shelter was too remote.[79] Thus, the

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charged subsequent annual fees based upon their annually occupied space. *See Illinois Gasoline Dealers Assoc.*, 491 N.E.2d at 116 (Section 2 of article IX of the 1970 Constitution is satisfied because the ordinance taxes all purchasers of gasoline uniformly and the classification is reasonable.).

70 112 Ill. 2d 356, 494 N.E.2d 135 (1986).

71 *Id.* at 366, 494 N.E.2d at 138-39.

72 *Id.*

73 *Id.*

74 99 Ill. 2d 444, 459 N.E.2d 1346 (1984).

75 *Id.* at 456, 459 N.E.2d at 1352.

76 *Id.* at 457, 459 N.E.2d at 1352.

77 *Id.* at 455, 459 N.E.2d at 1351.

78 *Id.*

79 112 Ill. 2d at 366, 494 N.E.2d at 139. The court stated:

> In *Crocker* those seeking to uphold the tax likewise contended that there was a reasonable relation between the taxed class and the legislative purpose . . . . However, this court [in

Boynton court, through its manipulation of the *Crocker* holding, focused its due process analysis on the relationship between the class taxed and the object of the legislation.

This focus was evident when the *Boynton* court relied on *Grasse v. Dealer's Transport Co.*[80] for the test to determine the "reasonableness of a classification from a due process point of view."[81] According to the *Boynton* court, the due process rational relation test requires that the legislature show that the classification bears a rational relationship to the object of the legislation.[82]

This relationship, however, is the proper focus of equal protection analysis.[83] Moreover, under an equal protection analysis the classification carries a presumption of validity and a court will only invalidate the classification if it lacks any conceivable supporting basis.[84] Due process analysis should focus on the leglislation in question and its relationship to the object of the legislation. Indeed, the *Boynton* court, after it relied on *Grasse* for the due process rational relation test, accurately stated the due process standard.[85] Nothwithstanding the *Boynton* court's recognition of the correct due process standard, it failed to properly apply the

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Crocker] held that there was no rational basis for imposing the tax on only the narrow class of taxpayers selected under the Act . . . . The court stated that the relationship asserted is simply too remote. The same reasoning is applicable to the class selected for taxation in this case, and the trial court properly held that the decision in *Crocker* was controlling.

As in *Crocker*, we consider the relationship between the purchase of the marriage license and domestic violence to be too remote to satisfy the rational relation test of due process.

Id. (citations omitted). The *Boynton* court, however, erred in its reasoning because the *Crocker* court never considered the relationship between the class taxed and the domestic violence shelter. Rather, the court considered the relationship between the domestic violence shelter and the operation of the court system, finding this relationship too remote. *See Crocker*, 99 Ill. 2d at 455, 459 N.E.2d at 1351.

80 412 Ill. 179, 106 N.E.2d 124 (1952).

81 112 Ill. 2d at 366, 494 N.E.2d at 139. The *Boynton* court relied upon *Grasse* for the due process viewpoint of testing classifications. The *Grasse* court, however, was not concerned with such a viewpoint. Rather, the court was concerned with equal protection and only mentioned due process to clarify the distinction between the two clauses. Indeed, the *Grasse* court, 412 Ill. at 194, 106 N.E.2d at 132, continues: "Although these constitutional guarantees overlap, so that a violation of one may involve the violation of the other, the spheres of protection they offer are not coterminous, for the guarantee of equal protection of the laws extends beyond the requirements of due process."

Both *Crocker* and *Boynton* noted this "overlapping." Because equal protection guarantees extend beyond due process guarantees, these courts should have considered that if equal protection is satisfied, due process will not be violated for disparity in tax burdens and benefits. *See infra* notes 90, 92, & 97 and accompanying text.

82 112 Ill. 2d at 366-67, 494 N.E.2d at 139. The *Boynton* court stated further that:

the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a *rational relation* to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guaranties of due process and equal protection of the laws.

Id. (emphasis in original).

83 *See supra* notes 64-69 and accompanying text.

84 *Id.*

85 The *Boynton* court stated:

The due process clause of our constitution, insofar as it limits the exercise of the State's police or taxing powers, prohibits the arbitrary and unreasonable use of these powers. To be a valid exercise of the police power, the legislation must bear a *reasonable relationship* to the public interest to be served and the means adopted must be a reasonable method to accomplish such objective. If a law bears a *reasonable relationship* to a proper legislative purpose and is not arbitrary or discriminatory, the requirements of due process are met.

112 Ill. 2d at 367, 494 N.E.2d at 139-40 (emphasis in original; citations omitted).

standard. Rather, the court applied a mixed equal protection and due process standard. Consequently the court invalidated the classification, without affording it a presumption of validity, because the court found that the classification was insufficiently related to the object of the legislation.

The correct interpretation of Illinois due process law holds that if the legislative enactment bears a "*reasonable relationship* to a proper legislative purpose and is not arbitrary or discriminatory, the requirements of due process are met."[86] The downtown office developers, challenging the exaction fee imposed by the city of Chicago as violative of due process could make two arguments. First, the purposes of the ordinance, raising revenue and creating low and moderate income housing, are not proper legislative purposes. Second, the ordinance is arbitrary because no rational basis exists for imposing the tax on the limited class of taxpayers when the benefits of the tax are not limited to these taxpayers.

With regard to the purpose of the ordinance, it is not disputed that "the proceeds of the tax must be used for 'corporate purposes' of the municipality levying the tax."[87] The purpose of the exaction fee can either be to establish low and moderate income housing or to raise revenue, both of which are valid corporate purposes.[88] Thus, regardless of whether the purpose of the ordinance is characterized as a specific nonfiscal objective or a general revenue objective, it is a valid corporate purpose.

As to the disparity between those benefited and those burdened with the tax, the United States Supreme Court, in *Carmichael v. Southern Coal & Coke Co.*,[89] stated that:

> It is not a valid objection to the present tax, conforming in other respects to the *Fourteenth Amendment* [*i.e.* equal protection], and devoted to a *public purpose*, that the benefits paid and the persons to whom they are paid are unrelated to the persons taxed and the amount of the tax which they pay—in short, that those who pay the tax may not have contributed to the [housing shortage] and may not be benefited by the expenditure. . . . Nothing is more familiar in taxation than the imposition of a tax upon a *class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied*.[90]

In *Library Directors v. Lake Forest*,[91] the Illinois Supreme Court reiterated *Carmichael*'s principles when it stated that a "lack of uniformity in the

86 *Id.* (emphasis in original). *See* Illinois Gamefowl Breeders Ass'n v. Block, 75 Ill. 2d 443, 454, 389 N.E.2d 529, 533 (1979); S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 77, 329 N.E.2d 213, 218 (1975).

87 Library Directors v. Lake Forest, 17 Ill. 2d 277, 283, 161 N.E.2d 272, 276 (1959).

88 *See, e.g.*, City of Canton v. Crouch, 79 Ill. 2d 356, 403 N.E.2d 242 (1980) (elimination of urban blight is a legitimate public purpose even though incidental private benefit will occur); *Paley*, *supra* note 63 (City's desire to promote commercial rebirth of downtown area is a valid public purpose). *See also* Rapid Transit Corp. v. New York, 303 U.S. 573 (1937) ("Regardless of the specific appropriation to be made from the tax proceeds, the object of the tax statute was to raise revenue."); *Mahin*, *supra* note 86 (raising revenue is a proper legislative purpose).

89 301 U.S. 495 (1937).

90 *Id.* at 521-22 (emphasis added). *See also* Springfield Hotel-Motel Ass'n. v. Springfield, 119 Ill. App. 3d 753, 457 N.E.2d 1017 (1983) (proceeds from the City's tax on hotel rooms did not have to be confined to tourism, but could be used for general corporate purposes).

91 17 Ill. 2d 277, 161 N.E.2d 272 (1959).

imposition of a tax is fatal to the levy, but if the tax is imposed with *equality and uniformity* and collected for the *public welfare*, the rule [of uniformity] does not apply to inequality of distribution."[92] Thus, if Chicago's ordinance imposing an exaction fee on large-scale downtown office developments survives an equal protection challenge and a public purpose challenge, the ordinance will not violate due process even if the downtown office developers are not responsible for the housing shortage or will receive no direct benefit from the creation of the low and moderate income housing.

3. United States Supreme Court Case Law

In *Rapid Transit Corp. v. New York*,[93] the United States Supreme Court faced a situation similar to the one facing Chicago. In *Rapid Transit*, the Court considered the validity of a New York City "Local Law" which taxed a specific class of utilities and which required the city to use the proceeds of the tax solely for the purpose of easing the city's unemployment. The utilities alleged, as the downtown Chicago developers might allege, that the law violated equal protection because the classification was not reasonably related to the object of the legislation and that the law violated due process because the law improperly burdened one class of taxpayers for an evil that they were not solely responsible for. The Court rejected both challenges and upheld the tax.

The Court held that the law did not violate equal protection. The Court found that several reasons justified the legislature's classification of the utilities[94] and, notwithstanding the fact that the legislature specifically appropriated the proceeds of the tax, the Local Law's object was to raise revenue. Thus, the Court concluded that the classification was reasonably related to the object of the legislation.[95]

With regard to due process, the Court quoted *Carmichael*[96] and held that it was not constitutionally necessary for the classification to be related to the appropriation. This allowed the Court to conclude that "[w]hat we have said in showing that the Local Laws do not deny the equal protection of the laws also disposes of the [utility's] contention that the Local Laws constitute a deprivation of due process . . . and as laying on a particular class a burden which should be born by all."[97]

Consistent with federal case law enunciated in *Rapid Transit* and *Carmichael*, and Illinois case law enunciated in *Library Directors*, once a court determines that a tax classification does not violate equal protection and that the appropriation is for a public purpose, the court should hold that the tax classification does not violate due process even though the burdened class is not the cause of the evil or that the burdened class will not

92 *Id.* at 282, 161 N.E.2d at 276 (emphasis added).

93 303 U.S. 573 (1937).

94 *Id.* at 580-81 (administrative convenience and the utilities' freedom from direct private competition).

95 *Id.* at 586-87.

96 *See supra* notes 89-92 and accompanying text.

97 303 U.S. at 587.

receive any direct benefit from the suppression of the evil.[98] Thus, Chicago's classification should withstand both an equal protection challenge and a due process challenge. Neither the United States nor the Illinois Constitution requires the burdened class to receive the benefit of the tax.

IV. Conclusion

Chicago lacks the statutory authority to impose an exaction fee on large-scale downtown office developments in order to create low and moderate income housing in the city's neighborhoods. This is true for two reasons. First, downtown office developments are not placing additional pressure on the housing market because the service sector employment growth is offset by the loss of manufacturing jobs and the pool of unemployed workers. Thus, the need for additional housing is not specifically and uniquely attributable to large-scale downtown office developments. Second, even if the need for additional housing is specifically and uniquely attributable to downtown office developments, the exaction fee may be disproportionate to the need created by the developments.

Chicago, however, is authorized to impose such an exaction under its home rule taxing power for two reasons. First, the exaction fee satisfies both federal and state equal protection clauses because a conceivable basis supports the legislative classification and the classification is reasonably related to the object of the legislation. Second, the exaction fee satisfies due process because neither the federal or state constitutions require a city to show that the burdened class is either the cause of the evil or the recipient of the benefit from the suppression of the evil. Thus, the large-scale downtown office developers must request the General Assembly to curb Chicago's broad home rule taxing power.[99]

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98 In *Crocker*, 99 Ill. 2d at 457, 459 N.E.2d at 1352, the court found that it was an arbitrary exercise of the legislature's police power, and thus violative of due process, to place "upon the members of a class a burden not shared by others." The *Crocker* court, however, as with the *Boynton* court, failed to utilize the permissive equal protection test before holding in this manner.

99 If the courts do not invalidate the tax, the developers can turn to the General Assembly to curb possible abuses in a home rule unit's taxing power. Section 6(g) of article VII of the Illinois Constitution provides that "[t]he General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit . . . ." *See* Chicago Park Dist. v. City of Chicago, 111 Ill. 2d 7, 17, 488 N.E.2d 968, 973 (1986) ("It is for the General Assembly, under article VII, section 6(g), to consider possible abuses of home rule powers.").