

Comments (2) |  Recommend (0)

Buzz up!

- [Print](#)
- [Reprint or License](#)
- [Share](#)

Appeals court upholds fee ruling against Cabarrus

County ordinance struck down that sought to require developers to pay fees for new schools.

[Like](#) Be the first of your friends to like this.

By Adam Bell
 abell@charlotteobserver.com
 Posted: Friday, Sep. 10, 2010

The N.C. Court of Appeals has unanimously upheld a lower court's decision that invalidated a Cabarrus County ordinance requiring developers to pay fees for new schools.

Cabarrus County will ask the N.C. Supreme Court to review the appeals court decision, County Attorney Rich Koch said Thursday. "It's an important enough issue that the Supreme Court needs to decide it once and for all," Koch said.

The appeals court had struck down a similar ordinance in Union County late last year, as well as ones for Durham County and the town of Cary.

Known as an adequate public facilities ordinance, such plans appealed to high-growth areas looking to offset the impact new developments would have by requiring developers to decrease the size of projects, delay construction or help pay for new school construction. Builders decried such measures as illegal impact fees.

Local developers and the Cabarrus County Building Industry Association sued Cabarrus County in 2008 over the ordinance, and a Superior Court judge sided with the builders in 2009. The fee had increased over the years and stands at \$8,617 for each single-family unit, said Concord attorney Jim Scarbrough, who represented the builders with Jim DeMay.

"We never thought (Cabarrus County) had a snowball's chance," Scarbrough said, adding that the ruling was expected because of the other court decisions.

Scarbrough and DeMay filed a separate lawsuit against Cabarrus County last year on behalf of 29 builders and developers seeking a refund of more than \$4.5 million in fees and interest. But that case is on hold until the appeal over the ordinance is concluded, Koch said.

In the Cabarrus APFO case, the appeals court said it was bound by the Union County decision, and that Cabarrus County lacked the authority to adopt its APFO. Cabarrus passed its ordinance in 1998.

The county asked for and received legislation in the General Assembly in 2004 to enforce the APFO throughout the county. But the appeals court said the county had not received legislative authority to adopt a revenue-generating impact fee.

Cabarrus County still collects money from the ordinance, Koch said. The county contends the APFO is a valid ordinance pending a decision by the state Supreme Court.

Union County's attorneys also asked the state Supreme Court to hear its appeal, but the court has not said yet whether it will take the case. The high court only hears about 5 percent of the cases it is asked to review, according to the court.

Adam Bell: 704-358-5696



[Subscribe to The Charlotte Observer.](#)