

Ariz. court ruling rejects challenge to impact fee

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PHOENIX (AP) - Arizona cities have broad powers to impose development impact fees, the state Court of Appeals said Thursday in a decision that upheld a levy by Mesa to help pay for cultural facilities used by the entire community.

Development impact fees are an ongoing source of friction between local governments and the homebuilding industry.

Municipalities contend the fees are a way to raise money to pay for facilities and services needed by growing communities.

Critics argue that the fees inflate home prices unnecessarily and burden homebuyers with costs not directly related to their property.

The decision issued by a three-judge Court of Appeals panel rejected a challenge mounted by the Goldwater Institute on behalf of the Home Builders Association of Central Arizona.

The lawsuit argued that Mesa charges a cultural impact fee of \$218 per new home to support services that are not necessary, don't specifically benefit new development and aren't reasonably related to new development.

Mesa determined the amount of its cultural impact fee by calculating costs of existing facilities and dividing the cost by the number of housing units in the entire city.

The city facilities include art, historical and youth museums.

The Court of Appeals said the city can charge its cultural impact fee because it stems from general powers granted to the city under state law and because the city has traditionally provided cultural facilities to residents.

However, such fees must be for services traditionally provided or deemed necessary under a general plan or facilities improvement plan, the ruling said.

Mesa's \$218 cultural facilities impact fee is part of a package of impact fees totaling \$8,321 per single-family home. Some other cities in the Phoenix area have fee packages twice as large.

Goldwater Institute lawyer Clint Bolick said the Court of Appeals ruling probably will be appealed to the Arizona Supreme Court.

"The court is basically giving a green light to cities to heap fees on new home construction that should be spread across the entire community," Bolick said.

Ken Strobeck, executive director of the League of Arizona Cities and Towns, welcomed the ruling. "The court got it right when it said that's a decision the city gets to make about what matters in their own community," he said.

The Mesa ruling is the latest of three Court of Appeals rulings that cities won on impact fee issues.

One of those rulings allowed Prescott and Prescott Valley to impose fees only on residential development, not commercial. Another, involving Goodyear, said that city didn't adequately consider anticipated revenue from new development when it set impact fees.

A fourth ruling went against a city, Apache Junction, which tried to levy a fee for school construction costs.