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Cash crunch fuels fight over impact fees

Crescent Resources joins list of developers challenging Cabarrus County in court.

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The battle over who should pay the costs of growth in Cabarrus County is intensifying as a major developer now says it shouldn't have to pay fees dedicated for new schools.

Crescent Resources last month became the latest developer to sue the county over its adequate public facilities ordinance, which requires homebuilders to pay thousands of dollars per house or apartment being built if there aren't enough public facilities to serve new residents.

The Charlotte-based developer, which filed for bankruptcy protection in June, owes the county more than \$1 million, on top of \$415,000 it has already paid, to build two apartment complexes, Crescent Circle at Concord Mills and Crescent Apartments at Kannapolis.

The lawsuit follows an August decision in three similar lawsuits, where a judge ruled in favor of developers, saying the county didn't have the right to impose the fees. The county maintains it has the authority to collect the money and has appealed the judge's decision.

At stake are millions slated for new school construction that potentially could be refunded to homebuilders. If the courts side with developers, the county would have to figure out a way to pay for new school construction. That could result in higher property taxes. The county has collected more than \$6.5 million since it imposing the fees in 2000 and has committed more than \$4 million to ongoing projects.

"The developers think they should be able to develop their property as they see fit and when they see fit, and it shouldn't cost them anything other than the normal development fees," said County Attorney Richard Koch. "But you've got to have seats for the kids that are generated (by the new development)."

The county also charges an impact fee to offset the cost of new sewage treatment.

After years of steady profits, developers face a growing cash crunch. Lenders have pulled back on loans they made during better economic times, and buyers have largely disappeared. Some property owners have turned to renting or leasing new buildings to generate income until the market improves. When Crescent filed its bankruptcy petition, it estimated its assets at \$2.2 billion and liabilities at \$1.9 billion. The company has said it expects to emerge from bankruptcy protection in the first quarter.

In a statement, Todd Farrell, president of Crescent Resource's Multifamily Development Group, said the judge's decision in August partially prompted Crescent's lawsuit, saying his company has "a responsibility to our investors."

"In addition to Circle at Concord Mills, we have several other properties in Cabarrus County planned for future multifamily development, so this is important for us," Farrell said.

Cabarrus County Manager John Day said he's seen more developers challenge the fees since the housing and commercial real estate markets tumbled. Recovery is expected to be slow-going.

In early 2008, more than two dozen developers jointly sued Cabarrus County, protesting its ability to levy the fees. They've asked for refunds of more than \$2.6 million. The county hasn't responded to that lawsuit.

Cabarrus County adopted the ordinance in 1998 to help it deal with its rapid growth. Six years later, the N.C. General Assembly passed special legislation granting the county the power to enforce it.

Rates have risen from \$500 per single family lot in 2000 to the current \$8,617. The county calculates each new house adds about \$12,000 in school capital costs. Developers of multifamily units pay \$4,153 per unit.

Owen Furuseth, an urban studies professor at UNC Charlotte, said such ordinances are common in Sun Belt states such as Florida and California that have grown rapidly. In North Carolina, state lawmakers grant local governments the authority to impose the fees. Local governments must specify why the money is needed and what it will be used for.

Furuseth said developers typically pass on the costs to homebuyers, and he's not surprised to see more legal challenges during the economic doldrums.

He said both sides have merits.

"It's just a matter of how you feel about new development," Furuseth said. "Is it fair for people who live here now to force new residents to pay more than they did in the past ... or is it fair to make existing folks pay extra to cover the costs of new folks coming."

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