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Court protects right of towns to impose fees on developers

by Jack Craver

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Here is an interesting display of conflict developer-municipality conflict. The town of Oak Grove won a case in appeals court today against the St. Croix Valley Valley Home Builders Association, who protested the fees the town levied on developers.

Oak Grove, like many other towns, levies an "impact fee" on developers to fund any increased public facilities or services that the new development will require. More sidewalks, roads etc. The town decided \$3,190 was an appropriate fee.

In 2008, the association, whose members were sick and tired of the fee, I assume, sued the town, arguing the fee was unconstitutional because it discriminated against development. The court ruled against them.

The association was clearly looking to set a precedent for the state on development. The court rejected its case largely because none of its members had attempted to argue against the fees on an individual basis by using the appeals process the town had set up (as required by state law). But it wasn't trying to challenge several thousands of dollars of fees — it wanted a review of a system which allows towns to force developers to pitch in for the public works that their projects often make necessary.

Impact fees are a fairly intuitive response to development. Development can help towns by raising property tax revenue, but it also creates a public service burden in the short-term. Hopefully this is not taken up by the Supreme Court.

Impact fees are often a topic of discussion in Madison budgeting. The controversy here relates more to how revenue from impact fees should be used, with libertarian-minded voices like Ald. Jed Sanborn opposed to using them for special projects.

