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Effingham loses court battle with developer

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Court of Appeals affirms prepayment of impact fees violates state law
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The Georgia Court of Appeals has ruled Effingham County's water and sewer agreements are in violation of state law in an affirmation of a lower court ruling.

In a decision released late Wednesday, the Court of Appeals agreed with Superior Court Chief Judge William E. Woodrum Jr. in the case of developer Park West Effingham against the county. Park West is a residential housing subdivision off Noel C. Conaway Road (Ga. 30).

Judge Woodrum ruled last May the county's water and sewer agreement with the developer was "void and unenforceable" and could not be performed without violating the law.

The county appealed that decision in July.

At issue was the agreement's requirement to pay annual impact fees of almost \$300,000 for the development's 10-year expected build-out period and to maintain a \$1.2 million letter of credit as guarantee of half of those impact fees.

The developers sued the county and the Georgia Environmental Finance Authority, claiming the annual payments and letter of credit were a prepayment of fees before building permits were issued, in direct violation of Georgia's impact fee laws.

The Court of Appeals agreed, writing, "the evidence shows the agreement itself, drafted by the county, is in violation of OCGA section 36-71-4 (d) in its basic purpose."

The court's decision also states the county's water and sewer agreement "calculates the payment of impact fees not in reference to the issuance of building permits, as required by statute, but as a sum certain."

The county's water and sewer system expansion and improvements were financed by GEFA, which required the collection of nonrefundable impact fees or cumulative letters of credit from developers as a special condition of the loan.

GEFA has since dropped the requirement and was not a party to the appeal.

The county attempted to call Park West's letter of credit in July, citing a shortfall in impact fee payments. Park West filed an injunction request, which stopped the bank from drawing down on the letter of credit. The developers then filed a petition asking the court to disallow pre-payment of impact fees.

The county had 10 similar agreements with impact fee and letter of credit requirements as of May last year.

Commissioner Phil Kieffer, who was first elected to the board in November, said he wasn't surprised with the Court of Appeals' action.

"I don't see how it could have gone any other way," Kieffer said. "I am not disappointed in the court's decision, but I am, however, disappointed it was taken to the Court of Appeals."

Kieffer said he believes the law is clear on the subject.

"While there are many state laws not easily interpreted, the Georgia Development Impact Fee Act is very clear and easily interpreted," Kieffer said. "The Board of Commissioners entered into an loan agreement with GEFA that allowed for repayment of those funds in a manner inconsistent with state law."

Park West's attorney, Claude M. "Mickey" Kicklighter, did not return messages for comment.

Water and sewer issues have long been a sore spot for many in Effingham County, at least as far back as 2003, when a small group of residents waged an ill-fought campaign against a multimillion-dollar expansion of the water-wastewater system.

As of June 30, 2010, the county owes GEFA \$32.8 million in principal on four loans that totaled \$35.6 million.

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