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Judge invalidates local impact fee

In the first court decision of its kind in the state, a **special judge** has invalidated Zionsville's parks **impact fee** because it violates Indiana statute. Boone Superior **Special Judge** Rebecca McClure on Oct. 17 granted summary judgment in favor of the Builders Association of Greater Indianapolis in the case of BAGI v. Zionsville Plan Commission, et al., No. 06D01-0610-PL-0380, ruling that the town's 2005 ordinance establishing a park **impact fee** doesn't comply with the **impact fee** statute requirements outlined in portions of Indiana Code 36-7-4.

In March, attorneys for BAGI filed a motion for summary judgment in the case that was filed in October 2006 and challenges the local **fee** of \$1,862 per lot. The association argued that the amount exceeds what state statute allows and asked the court to require Zionsville to instead establish a **fee** conforming to Indiana law.

Park **impact fees** go to recreational land and facilities necessitated by new residents, and are usually paid for by homebuilders when obtaining a building permit to construct a new home. The **fee** is often passed on to a new homeowner, typically at closing. Statute says that an **impact fee** on a development may not exceed the **impact** cost minus the sum of non-local revenues and **impact** deductions.

In her ruling, **Judge** McClure notes that the municipality's utilization of the "national average" in determining the local **impact fee** fails to comply with state law.

Attorney Bryan Babb, who represented BAGI, said this is the first time a court has interpreted the **Impact Fee** Statute to invalidate an **impact fee**.

Babb is requesting that the town provide an accounting of all the money collected as a result of the invalid **fee**. If an appeal ensues, he wants that money placed into a court-supervised escrow account until an appeal is finished. If the town doesn't appeal, Babb wants the money paid back immediately.

"You can't collect an invalid **fee**," he said. "If you enact a **fee** that's later found to be invalid, you shouldn't be entitled to the benefit of that money you wrongly collected." - Michael W. Hoskins