

## ***BAGI v. Zionsville Parks and Recreation Impact Fee***

### Ordinance History:

In the spring of 2005, the Town of Zionsville began the process of adopting a Park and Recreation Impact Fee ordinance under Indiana Code 36-7-4-1300. As required by Indiana Code, the town at that time established an Impact Fee Advisory Committee to conduct a parks and recreation impact fee study. The study is required to assess a municipality's current parks system and future needs.

Shortly thereafter, Zionsville hired a professional planning and consulting firm to consult the Advisory Committee and create a Zone Improvement Plan for the town. Throughout most of 2005, the Advisory Committee, under the guidance of their consultant, worked through the process of establishing standards and developing processes for calculating the impact fee under the standards set forth by Indiana Code.

On October 11, BAGI sent a letter to the Park Board Members, Town Council Members, and Town Planning Director and Parks Superintendent indicating that our Association was not opposed to the \$1,054 park impact fee, as it was calculated according to Indiana Code. On October 12, 2005, the Advisory Committee recommended to the Zionsville Park and Recreation Board that the park and recreation impact fee should be set at \$1,054 per lot, and the Parks Board agreed by sending that suggested fee to the Plan Commission with favorable recommendation.

A week later, on October 17, the Advisory Committee repeated its recommendation to the Plan Commission, but they instead increased the recommended amount to a fee of \$1,862. This figure was based upon a "national average" of park and recreation impact fees. On October 26, BAGI sent a letter to the Zionsville Town Council stating opposition to the artificially increased fee, and an explanation of why the Association viewed the fee to be in contradiction with the requirements of Indiana Code. Despite the improper justification for the increased fee, this amount was adopted by the Town Council on December 5, 2005.

On October 19, 2006 BAGI filed a declaratory judgment action asking the Court to declare Zionsville's impact fee ordinance invalid.

## Court Findings:

The Special Judge Rebecca S. McClure issued judgment in Boone Superior Court I on BAGI's Motion for Summary Judgment. In her decision, she found for BAGI on the following six separate points to render Zionsville's ordinance invalid. As a result, the town will be required to refund approximately \$337,000 plus interest. The legal findings and reasoning issued by Judge McClure are:

1. Zionsville's Impact Fee Ordinance violates Indiana's Impact Fee Statute by the way in which impact fees are used to fund future park facilities.
  - Zionsville's attempt to charge only projected new development for a facility which is needed to serve *both* the existing population plus new development is directly contrary to the statute.
  - *Example:* Zionsville intended to construct a new skate park using only impact fees on new development to fund the park.
  
2. Zionsville's Plan and Ordinance are invalid in that a "national average" was used to set the Town's parks and recreation impact fee.
  - Indiana Code requires that an impact fee ordinance must provide *objective and uniform* standards for calculating impact fees to allow for payers to accurately predict the impact fees that will be imposed.
  - Code also requires that the impact fee be *directly related* to the "costs of construction or expansion of infrastructure that is necessary to serve the new development"
  
3. Zionsville's Zone Improvement Plan is invalid in that all or several elements required by Indiana Statute are missing.
  - A Zone Improvement Plan must indicate the "proposed timing and sequencing of infrastructure installation", which was not included in Zionsville's plan
  - Zionsville's plan also does not include the required "general description of the sources and amounts of money used to pay for infrastructure" in previous 5 years
  - Zionsville's plan does not "indicate the nature, location and cost of infrastructure that is necessary to raise the current level of service to the community level of service" as is required
  - Zionsville's plan does not "identify the revenue sources and estimate the amount of the revenue sources" needed to meet the community level of service, as required

4. Zionsville's Impact Fee Ordinance does not utilize an "objective and uniform standard" to determine certain statutory criteria listed in Indiana Code.

- Indiana Code requires that a municipality's impact fee not exceed the sum of its impact costs *minus* the sum of its non-local revenues and impact deductions. Zionsville did not consider non-local revenues when calculating park impact fee
- Further, Zionsville's use of the *national average* of park impact fees did not represent an "objective and uniform standard"

5. Zionsville's Impact Fee Ordinance is invalid because it was calculated using "semi-public" park facilities that don't belong to the Town of Zionsville, in violation of Indiana Code.

- Zionsville's use of "semi-public land" in the form of 9 Little League diamonds and 14 soccer fields in determining current level of service violated requirements of Indiana Code

6. Zionsville's Plan is invalid because it requires that new development pay for infrastructure needed to serve both new development and future annexations.

- One of the basic tenets of Indiana's Impact Fee Statute is that impact fees will only be "imposed on new development"
- Zionsville based their fee on estimated costs of future park facility needs based on future development *and annexation* divided by the number of new permits alone
- This methodology is contrary to the requirement of basing impact fees only on the *actual infrastructure needs caused by actual development*, not speculative needs or future annexation.