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Special judge invalidates local impact fee

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In the first court decision of its kind in Indiana, a special judge has invalidated Zionsville's parks impact fee because it violates state statute.

Boone Superior Special Judge Rebecca McClure granted summary judgment Friday 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 Section 36-7-4.

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

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Park impact fees go to recreational land and facilities necessitated by new residents. The fees 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 noted 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 the builders association, credited Judge McClure for a fine job on a difficult issue of first impression.

"This is the first ruling that has interpreted the Impact Fee Statute to invalidate an impact fee," he said.



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