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A victory for impact fees, but schools still left out

The S.C. Supreme Court ruled last week that Summerville did it right when it approved development impact fees three years ago that now total some $4 million. That's not only good news for the town, the decision also should be helpful to all those local governments that are experiencing the financial downside of rapid growth. Unfortunately, however, the state law that controls impact fees doesn't allow them to be used for public school capital improvements, one of the most expensive aspects of dealing with an accelerating population. The Legislature should fix that in the upcoming session.

The Summerville decision was a result of a challenge to the town's impact fees by the CharlestonTrident Home Builders Inc. At issue was whether the town had followed state law in imposing those fees. The court found that the town ordinance 'substantially complies' with the law that requires a capital improvement plan. Further, it found that the calculation of the fees was proper. The town imposed the fees to cover the increased cost of such municipal services as parks and recreation and fire protection.

Mount Pleasant was the pioneer in development impact fees, utilizing its 'home rule' authority in the mid-1990s. But when several other communities followed suit for a variety of purposes, from water and sewer to fire and police protection, protests from home builders resulted in legislative intervention, according to Howard Duvall, executive director of the Municipal Association of South Carolina. The resulting 1999 legislation sets forth restrictions on the impact fees and specifies the documentation needed and conditions under which they can be imposed. Last week's Supreme Court decision analyzes the Summerville consultant's report and comprehensive plan and should be must reading for other communities considering how to properly set impact fees. Berkeley County is among those rapidly growing counties currently considering imposing the fees.

Mr. Duvall says the state legislation is generally acceptable, but cites as a shortcoming the absence of schools from the accepted list of approved purposes. The only exception in the state is the Fort Mill school district in York County, which began imposing a development impact fee in 1996. State Sen. Linda Short, whose district includes York County, tried unsuccessfully this past session to expand the impact fee authority to all other school districts in the state. York has three other school districts. The bill died in committee.

The Fort Mill district, one of the most rapidly growing in the state, is 'grandfathered in,' according to Assistant Superintendent for Finance Karen Puthoff. The development impact fees, which are set at $2,500 per new residential unit, have totaled some $16 million since they were imposed and are used to pay the debt service on capital improvements. While development interests have effectively lobbied against other communities following Fort Mill's example, Ms. Puthoff says there has been little adverse reaction there. Growth, she says, has even further accelerated since the fees were imposed. Waivers, she said, can be granted in cases of low-income housing, but those cases must be made in advance of applying for building permits.

While communities generally welcome what new development can add to their work force and tax base, there is a point, Mr. Duvall notes, when growth is so rapid it doesn't pay for itself. That's the point where development impact fees should be considered. There is no greater demand when populations explode than for new schools. The Legislature should no longer deny those paying for new school facilities in heavily impacted areas the option of getting some relief through development fees.