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TRIANGLE BUSINESS JOURNAL

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Appeals court says no to Durham impact fees

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A North Carolina Court of Appeals ruling filed Tuesday upholds a trial judge's earlier decision that Durham County officials have no statutory authority to impose impact fees on new residential construction.

The case challenges the county's right to impose impact fees on new development to finance construction of new schools without having a direct statutory approval from the state General Assembly.

After a number of failed attempts in recent years to persuade North Carolina legislators to support a bill implementing impact fees, Durham County officials in 2003 put in place an impact fee system on their own, claiming that their right to impose the fees was already covered under state law.

The fees, which were either \$1,155 for a multi-family residence or \$2,000 for a single family home, were implemented in 2003 to help finance the construction of badly needed schools.

County officials argued that, because the county was required to provide adequate educational facilities, they had the legal right to impose impact fees to finance the projects.

But a band of 13 developers with a stake in the Triangle construction market disagreed, suing Durham County on the grounds that the county had no statutory right to place its own financial burden on the backs of developers.

Durham County Attorney Chuck Kitchen appealed the decision in February. The North Carolina Court of Appeals ruled Tuesday that the trial court's decision should stand and that any impact fees paid to the county by developers should be refunded.

"After reviewing the authority and reasoning on each side, we have determined that the trial court did not err in deciding that the County's school impact fee was unlawful, void, and without legal effect," the court's opinion reads. "It also did not err in ordering that a refund of the collected and separately maintained school impact fees is an appropriate remedy for the County's actions."

The court did agree with Kitchen that interest on the impact fees already collected should not be refunded.

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