



[[Home](#)] [[Cops&Courts](#)] [[Insider](#)]

[[Editorial](#)] [[Letters](#)] [[About Us](#)] [[Obituaries](#)] [[Outside the Bubble](#)] [[Between the Lines](#)]

[Home](#)

Berlin Unable To Waive Impact Fees, Court Ruling Says

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07/13/2006 BERLIN – The Berlin Town Council learned this week it does not have the power to waive impact fees.

Local developer Dave Lilley came before the Town Council to request such a waiver because he felt that the new impact fee structure was unfairly applied to a project he began working on before the new fees took effect in November 2005.

Lilley said he was unaware of the change, which doubles the amount he expected to pay from \$8,875 to \$17,550. The developer is building a two-floor storage facility. He thought he was required to \$1 per square foot for the footprint of the building, not the entire square footage.

"Personally, I think it's a lot of money," said Lilley. "I'm looking at \$20,000 for building permit fees."

The town is making money off a property that previously "was null and void," said Lilley, contributing nothing to the town.

Although Lilley had begun the town's planning and permitting process before the fees changed, including submitting a site plan, he had not applied for builder's permits.

"What I'm asking for is some leniency," said Lilley.

According to Berlin Town Attorney David Gaskill, the Maryland Court of Special Appeals recently ruled that the mayor of Frederick, Md., has no authority to waive an impact fee. The only way for any Maryland town to do so would be to build a waiver method into the ordinance itself.

"You all could amend the ordinance if you chose to," said Gaskill.

Council Vice President Gee Williams said that might be a slippery slope for the town.

"Looking ahead, we don't want to get into the waiver business," he said, suggesting the second floor significantly increases the value of Lilley's property. "If that floor wasn't there, you couldn't sell the air."

Williams added, "I do agree you've been caught up in the change here."

According to Planning Superintendent Stacey Weisner, roughly five builders fell afoul of the changeover. If he had known that the permit date would trigger the higher fee, Lilley said, he never would have walked out of the Planning Office without a building permit the day he turned in his storm water management plan. If he had known about the fee ahead of time, he would have paid it gladly, he said.

"There's no relief here because of the way the law is written," said Council member Paula Lynch.

Mayor Tom Cardinale agreed, saying, "I wish there was something that could be done. I really do. I don't see how."

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