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June 9, 2006

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Court rules against school impact fees

June 08, 2006

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RALEIGH — Developers and new homebuyers claimed a victory Tuesday as the N.C. Court of Appeals ruled that Durham County had unlawfully assessed school impact fees.

Had the court ruled differently, allowing the impact fees to stay in place, counties across North Carolina would have been free to levy such fees on new construction without getting specific authority to do so from the General Assembly.

“A lot of counties were waiting in the wings to do something based on this decision if we had had a favorable outcome,” said Durham County Manager Mike Ruffin. “Counties across the state are really struggling to find the money for new schools.”

“It’s a big victory for the real estate industry,” said Mike Carpenter, executive vice president and general counsel for the N.C. Home Builders Association. “But it’s a benefit for homebuyers and the housing industry in general.”

Ruffin said whether the Durham commissioners will try to appeal the case to the N.C. Supreme Court is still up in the air.

Jim Blackburn, general counsel for the N.C. Association of County Commissioners, said that if the ruling stands, the stage could be set for a battle over impact fees in future legislative sessions.

“It’s going to be a major initiative on our part,” Blackburn said.

Durham commissioners had claimed they have general statutory authority to impose the impact fees under a law giving commissioners the ability to set fees for services rendered.

The appeals court thought differently.

The opinion, written by Judge Rick Elmore with judges Eric Levinson and Doug McCullough concurring, says that the duty to provide adequate school facilities is assigned to the county itself, not the county’s officers or employees.

“The plain language of the statute limits the board of commissioners’ power to fix only those fees ‘charged by county officers and employees

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for performing services or duties permitted or required by law," the opinion says. "Unlike processing a permit, reviewing an application, or maintaining records, the county's officers or employees are not actually going out and building schools."

Durham commissioners, after years of having their request for local impact-fee legislation rejected, decided to enact their own impact-fee ordinance. It took effect Jan. 1, 2004, and was levied on new homes. According to a press release on the Durham County government Web page, the county has collected nearly \$7.6 million in fees.

Carpenter said that while the homebuilders group recognizes the pressure that growth is placing on commissioners for new schools, he said the costs shouldn't be passed along to purchasers of new homes.

"Certainly public education is the responsibility of the entire community and ought not to be an additional burden on people who are purchasing a new home," Carpenter said.

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