

## **Lawyers: Kane can't lower fees to spur development**

### **That's what transportation department lawyers tell Kane County Board**

By James Fuller Article updated: 4/27/2012 12:43 PM

Just wanting to stimulate the economy and create local jobs isn't a good enough reason to lower Kane County's fees on new homes and businesses.

A new legal opinion Thursday stymied county board members' efforts to agree on how much they should reduce road impact fee rates. The county imposes the fees to hold new development accountable for the increased burden placed on roads because of increased traffic created by new homes and businesses.

County officials have collected \$22 million for road projects since they started charging impact fees about a decade ago. That's back when Kane County was experiencing new growth at a faster rate than almost any place in the country.

The fees helped county officials match that growth with better roads and traffic flow. Now the growth is gone and some board members think the impact fees should follow.

““If you don't have any growth, you don't have any fees to collect in the first place,”” board member Mike Donahue said. ““The argument is we need to reduce these fees as an economic stimulus to create jobs.””

But a legal opinion from lawyers in the county's transportation department says the law on impact fees doesn't allow them to be used solely as a tool to tweak economic growth.

The fees must be fairly and evenly tied to the actual need for road improvements caused by new growth. By that standard, even the little growth the county sees now still creates a transportation burden.

But Donahue said that legal argument comes from a segment of the county board that doesn't want to lose a revenue stream no matter what.

““The concern is we're going to get sued because we don't comply with the statute,”” Donahue said. ““But I can't imagine anyone suing government for reducing fees or taxes. This is just a classic case of government establishing a fear attack. Once they have (the money) they don't want to give it up.””

Transportation Committee Chairman Cathy Hurlbut said the legal opinion doesn't mean officials can't lower the impact fees as several local municipalities have now urged the county to do.

If officials demonstrate slow economic growth has caused little to no additional impact on county roads, a lower fee may be justified as long as it's fairly applied. But lowering the fees should only be done if it doesn't result in taxpayers having to pay the costs of road improvements for new growth instead of developers.

““We did \$22 million worth of road improvements that we wouldn't have been able to do if we didn't have this impact fee,”” Hurlbut said. ““The feds wouldn't have replaced that money if we didn't collect it. It's money we wouldn't have had. So either we wouldn't have done the projects or we would've had to levy (raise taxes) for it.””

County officials will get a second legal opinion from the Kane County state's attorney's office before moving forward. They also want hard data how other local governments have handled their impact fees during the down economy. Information is also expected regarding how much of the housing stock and storefronts in the county are vacant. Some board members believe there's no need to spur new housing and commercial developments if there is a surplus of available space.