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Stakes high in impact fee game

By Ray Gronberg, The Herald-Sun
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DURHAM -- Durham County's the one in court, but it's hardly the only North Carolina county trying to find a way to levy per-home impact fees or something like them to extract money from developers and new residents to finance school construction.

Neighboring Granville County this spring joined Durham in passing an impact-fee ordinance. And two counties on the fringes of Charlotte are making builders pay what they call "facilities fees" that look a lot like an impact fee.

The numbers just in Durham show that the stakes for the counties -- all located in fast-growing areas of the state -- are huge.

Durham County Finance Director George Quick said his government has collected \$3.8 million in fees from local builders since its fee ordinance took effect on Jan. 1, 2004.

A list compiled by the county in early January showed that as of early winter, the builders of 1,019 single-family homes and 145 multi-family units had paid into the program.

Durham charges a \$2,000 fee for a single-family home and \$1,155 for a townhouse, condo or apartment.

Money rolls in

And assuming the courts don't rule the ordinance is illegal -- a possibility the N.C. Court of Appeals is considering -- the money seems likely to keep rolling in.

Preliminary agendas for the city/county Planning Commission's August and September meetings have applications on them that would add 450 townhouses and 427 single-family homes to Durham's housing stock.

If the county's impact fees withstand court challenge, those homes would generate almost \$1.4 million for the Durham Public Schools' construction program.

With those kind of numbers in play, Durham's ongoing attempt to defend the legality of its ordinance against a challenge by local builders is attracting statewide attention.

"At least 10 to 12 counties are watching it very strongly," said Bill Hopper, the county attorney in neighboring Granville County. "Eventually, there has got to be a political answer to the whole problem."

The political dimensions of the issue are well-rehearsed, and can be quickly summarized.

In the state's fast-growing counties, elected officials are wary of passing along the costs of the school construction needed to serve new neighborhoods in the form of higher property taxes on established residents or the elderly -- two groups that are more likely than newcomers to vote in local elections.

Alternatives

So they've gone looking for alternatives, and per-home impact fees are among the most likely.

Alternatives like an impact tax -- which would vary with the size or value of a house -- and a real-estate transfer tax have their adherents.

The impact fee gets attention mainly because it's already gotten a trial run in Orange and Chatham counties, the only two counties in the state that are levying the fee with the explicit permission of General Assembly.

In Orange, the fee has generated more than \$20 million since the county began levying an impact fee in 1993, Orange County Finance Director Ken Chavious said.

Impact fees will pay a quarter to a third of the bill for the Chapel Hill-Carrboro City Schools' third high school, which contractors will build soon on the edge of Carrboro.

The \$35.9 million project will receive \$9.3 million in impact fee revenue the county has piled up in the bank over the last few years, Chavious said.

City school system leaders think the fees will pay for even more of the high-school project. Counting money in the bank and money officials can expect to arrive in the next few years, the contribution may approach \$12.5 million, Assistant Superintendent Steve Scroggs said.

Either way, those numbers and proportions make the Orange school systems the envy of their neighbors.

Lawmakers say no

"In the last census, Granville County grew in excess of 20 percent," said Granville County Commissioner Ron Alligood, whose county is receiving a lot of spillover growth from Durham. "The school facilities are inadequate. With every 600 students you're talking about a new school, and with two or three subdivisions that's what you're looking at."

State legislators, however, consistently have refused to let more counties have the same explicit authority to levy impact fees that Orange and Chatham enjoy.

The reason, in part: opposition from the N.C. Home Builders Association.

The association considers the fees bad for business and believes they run counter to the idea that every member of a county's population has an equal stake in its schools and economic growth.

In every election cycle, the association gives big-dollar campaign donations to the leaders of the House and Senate, and to key gatekeepers like the finance committees in both chambers.

Donations

It's unclear whether those donations influence legislators or simply reward those predisposed toward the association's position. But what is clear is that bills that would expand fee authority to more counties have gotten nowhere for at least a decade.

Two counties near Charlotte -- Cabarrus and Stanly -- have taken matters into their own hands and imposed impact fees by another name. They call them "facilities fees" and justify them by referring to a court precedent that allows local governments to turn down developments that would overtax public facilities.

Both Cabarrus and Stanly argue that if they can do that, they logically should be able to ask or require developers to contribute to offsetting the facility shortages that may otherwise cost them a permit.

The N.C. School Boards Association has gone the counties one better by arguing -- in a friend-of-the-court brief filed in support of Durham's case -- that the state constitution requires counties to have equal funding authority.

Unequal funding

The state constitution requires the General Assembly to provide "by taxation and otherwise" a "general and uniform" system of public education, the brief noted, adding that recent cases on school funding have touched on facilities.

But if legislators give a few counties like Orange and Chatham permission to levy impact fees, and withhold it from others, they're creating a situation where some counties "are at an advantage in having a

whole other sources of funds that other counties don't," said Kathleen Tanner, one of the attorneys who authored the brief.

"If it is necessary to allow one system to have this method, it's logical that everyone needs it," added Allison Schafer, the School Boards Association's general counsel.

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