

Court: County must repay millions in impact fees

**Opinion could cost county
\$22 million**

By EARL KELLY, Staff Writer

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The county must refund property owners as much as \$22 million in impact fees because it failed to expand school and road capacity in some districts as required by law, an appeals court ruled last week.

In its Thursday opinion, the Court of Special Appeals sent the case back to the Anne Arundel County Circuit Court to gather more evidence and to compute the amount of damages owed to the plaintiffs.

At issue are impact fees the county collected from 1987 through 1996, but never used to expand schools and highways in the district where the parcels of land are located.

The 53-page Court of Special Appeals opinion, written by retired Judge Lawrence F. Rodowsky, opened by calling this "the latest battle in the war that has been raging for almost seven years."

"It's been a long wait, but it is a good result," said John R. Greiber, attorney for Odenton-area homeowners and developers who brought the case.

Because the case was certified as a class action, owners not listed in the case, but who own homes built during the specified years, will be entitled to share in the recovery, Mr. Greiber said.

The appeals court sent the case back to the county Circuit Court to make the actual computations.

Mr. Greiber said the recovery totals about \$12.3 million for fees that were collected but not used properly. On top of that, he said the law provided for about \$8 million in interest on the money, plus another \$2 million for interest the judgment earned since the county appealed, for a total of about \$22.3 million.

"Not too bad, huh?" he said.

Mr. Greiber estimated that from 20,000 to 40,000 property owners will share in the award.

Attorneys will get 30 percent of the final judgment.

County Attorney Jonathan Hodgson, who represents Anne Arundel, called Mr. Greiber's valuation of the case "just nonsense."

"One of the problems from the outset has been the outlandish expectations and valuations the plaintiffs have put on their case," Mr. Hodgson said.

"Our preliminary calculations based on the opinion would require the county to pay the plaintiffs about \$2 million plus some incidental interest," Mr. Hodgson said.

Councilman Jamie Benoit, a Crownsville attorney who specializes in bond and tax cases, has made impact fees one of his areas of specialty while on the County Council.

"Mr. Greiber is trying one of the oldest ticks in the book; he is trying to goad us into settlement," said Mr. Benoit, who said he has studied last week's opinion carefully.

While Mr. Benoit said he didn't agree with Mr. Greiber about the amount of damages involved, he said the whole system of impact fees should be revised.

"I believe the preferred way is to do away with impact fees and raise the fees for impact through recordation and transfer taxes," Mr. Benoit, a Democrat, said.

That way, the money raised can be used wherever it is needed, and not tied to any particular impact district.

The plaintiffs claimed that the county improperly spent as much as \$5.5 million in impact fees to remodel Park Elementary School in Brooklyn Park and South Shore Elementary School in Crownsville, but failed to expand the schools' capacities.

The county also spent money on trailers, or "relocatable classrooms."

The appeals court said trailers did not meet the requirements for infrastructure because they were not permanent structures, and can be moved to locations outside the impact-fee district where the money was raised.

Among the road projects at issue are sections of East West Boulevard in Severna Park that were paid for with money collected in other districts.

Former County Executive Janet S. Owens, whose administration collected some of the impact fees in question, did not return a call made to her home last night.

Developer John Pantelides, founder of the Anne Arundel County Alliance for Fair Land Use, said this case shows a need for changing the law that controls impact fees.

"The system they have doesn't work; it has never worked," Mr. Pantelides said. "We ought to change the law to where you don't have to spend the money in the district where the impact fees are raised, you may spend it where it is needed."

Hard-fought case

The underlying case was filed in Anne Arundel County Circuit Court on Feb. 21, 2001. The court initially heard the case and entered judgment against the county for \$4,719,359, according to the Court of Special Appeals' opinion, plus 5 percent interest beginning on the date of each fee's initial payment, which brought the total to about \$11 million.

The Circuit Court also awarded attorney's fees for the developers and homeowners, equal to 30 percent of the total recovery.

The Court of Special Appeals opinion, which was unreported and therefore will not be binding law on future cases, explained impact fees:

"Development impact fees are a source of municipal revenue in addition to, and different from, usage fees, benefit assessments, and property taxes."

Local jurisdictions use these fees instead of issuing additional bonds or levying more taxes.

Impact fees shift the cost of capital improvements, such as schools and roads, "to the new residents who create the need for them," Judge Rodowsky wrote, and are collected before the improvements are built.

Unlike revenues raised from taxes, impact fees must be committed to building infrastructure within six years of being collected. Otherwise, the money must be refunded to the current property owner.

Anne Arundel County began imposing such fees in 1987, according to the opinion.

The county hired the Baltimore firm DLA Piper to represent it in this case, saying that the case was too complex for the Office of Law to handle it alone. DLA Piper is one of the largest law firms in the world.

The county has paid at least \$500,000 for the services, sources said.

Mr. Greiber said the case has been "seven years and 7,000 pages of exhibits," and it has been nasty at times.

The county moved, for example, to disqualify Mr. Greiber and his partner, Phillip F. Scheibe, from the case.

Mr. Scheibe served as county attorney for Anne Arundel County from December 1994 to May 1999. The county Ethics Commission investigated his involvement in the impact fee case in early 2006 and ordered him to "terminate his participation and assistance" in the case.

Mr. Scheibe continued working on the case, according to the appeals court opinion.

In sending the case back to the Circuit Court, Judge Rodowsky suggested that the trial court should reduce the award by whatever amount Mr. Scheibe would have earned on the case after the Ethics Commission ruling.

At the same time, the appeals court denied the county's request to disqualify Mr. Greiber from representing the plaintiffs.

Mr. Greiber said he has filed another case, on behalf of owners of property who have paid impact fees since the dates covered by this opinion.

- No Jumps-

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