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## Law for impact fees has little chance

By John Stevenson : The Herald-Sun  
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DURHAM -- Durham County officials got little encouragement from legislators Friday in their effort to assess developers with so-called impact fees for school construction.

One lawmaker said a bill authorizing impact fees would "go down in flames."

Superior Court Judge Orlando F. Hudson last week declared the fees illegal. He also ruled Thursday that the county must stop collecting them as the case works its way through an appeal process.

But the state Court of Appeals on Friday set Hudson's ruling aside temporarily, meaning the county can continue to collect the fees during the appeal.

If it loses the appeal, Durham County would have to refund \$2.2 million in previously collected fees, plus 8 percent interest.

Meanwhile, the county is trying to lobby the General Assembly for a law to allow the fees to be collected at a suggested Durham rate of \$2,000 for each new home built and \$1,555 for an apartment or townhome.

But the Durham Land Owners Association, an unincorporated group of developers that took the case to court two years ago, contends the fees are unfair and a burden to businesses.

The fee issue was a hot topic at a Friday breakfast meeting attended by several commissioners and local legislators.

"We want you to give us enabling legislation," County Attorney Chuck Kitchen told State Rep. Mickey Michaux of Durham.

Michaux wasn't encouraging.

"I could be a champion for impact fees," he told Kitchen. "But it's just not going to fly over there [in the General Assembly]. You can rest assured. We can put it in there, but they're going to kill it. ? The bill will go down in flames. I could put it in there, but I probably would have to amend it out."

Rep. Paul Luebke agreed.

"You will have a clear majority of the General Assembly that will vote no," he said.

County Commissioners Chairwoman Ellen Reckhow said Stanley County recently

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adopted impact fees and hasn't been sued yet.

Similarly, Mecklenburg County "wants to make it a big issue this year," Reckhow said. "They're getting squeezed."

More than one commissioner concurred that impact fees in Durham would help keep tax rates down and thus make the community more desirable for would-be residents and businesses alike.

"To the degree that communities can keep their tax rates lower, they're going to be more competitive in attracting businesses," Reckhow said. "To the degree that we keep piling onto our tax rate, we'll be less competitive."

County Commissioner Lewis Cheek said he was disappointed that most state legislators don't support local impact fees.

"It's really troublesome to me when we can't get enough money [from the Legislature] to cover our needs because of a budget shortfall," he said. "But at the same time, the Legislature won't give us the means to raise the money ourselves. We can't get the money from the Legislature, and the Legislature won't give us the power to raise it."

Commissioner Becky Heron said she's amazed developers oppose the fees, since the money would help pay for school construction.

"Why would anybody want to move into a community that doesn't have good schools?" she said.

Reckhow said the issue is "coming to a head" in Durham because of the recent judicial setback.

County officials had hoped to use impact fees to build a new middle school, she said.

"We could start running out of capacity at the middle school level in the next year or so," she said. "That could be a flashpoint for us in the next couple of years."

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