

Published: Oct 04, 2007 11:14 PM
Modified: Oct 04, 2007 11:14 PM

Home builders want Cary to repay fees
Town: Developers paid impact fees voluntarily

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RALEIGH - Almost a dozen home builders say the town of Cary lacks the authority to impose school impact fees on new development and have filed a civil lawsuit in Wake County Superior Court to get their money back.

Town officials agree with them. They pointed out they repealed the ordinance that required builders to pony up the fees to be granted construction permits for new homes and townhouses because it lacked authorization from the General Assembly.

But they refuse to give back about \$3 million in school impact fees collected from eight subdivision projects. The reason: The developers voluntarily agreed to pay this money to win zoning approval for their projects.

"We didn't make it a condition of zoning - they did," said Town Manager Bill Coleman. "We didn't put it in there. The developers put it in there themselves to avoid being denied when their plans came up for approval."

The builders beg to differ. In a lawsuit filed Thursday, they point out that the impact fees for one of the eight projects were spelled out as a means of complying with the ordinance the Town Council later repealed.

The plan for Cameron Pond, a 143-acre subdivision with up to 417 homes, was approved in May 2003, the lawsuit said. The ordinance was repealed in September 2004 because "the Town has no authority to require fees from developers for schools," the lawsuit quoted council member Jennifer Robinson as saying.

"It's a little unusual for a municipality that does not run a school system to be charging an impact fee for schools," Mike Carpenter, executive vice president and general counsel for the N.C. Home Builders Association, said Tuesday.

In June 2006, the state Court of Appeals ruled that Durham County's impact fees on new home construction were illegal because the county lacked legislative approval to impose them.

The ruling, which cast a cloud on impact fees across the state, forced county officials to refund more than \$7.5 million it had collected from developers. It also reinforced state statutes and constitutional provisions that limit county and municipal governments to

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powers specifically granted them by the General Assembly.

Builders at Cameron Pond have paid \$458,000 in impact fees as of the end of 2006, the lawsuit said. So far, town officials have not turned over this or the rest of the \$3 million in fees collected from the eight projects to Wake County school officials.

"It would be monumentally unwise for us to spend any of that money when it's the subject of the lawsuit," said Cary Mayor Ernie McAlister.

McAlister blamed his predecessor, former Mayor Glen Lang, for both the repealed ordinance and the development deal struck on the eight projects. He also said his opponent in the Oct. 9 election, former Town Council member Harold Weinbrecht, bore responsibility as one of Lang's chief allies.

"It's another example of something that's a further burden on the current council -- cleaning up the failed policies of the prior mayor and council," he said.

Lang did not return phone calls. Lori Bush, a spokeswoman for Weinbrecht, said the candidate wouldn't comment on the lawsuit until he read it.

The original ordinance, passed in July 1999, required builders to get a certificate from the Wake County Board of Education saying there was adequate classroom space to meet the demands of their new projects.

That ordinance was amended in July 2003, setting a schedule of school impact fees that builders could pay instead of gaining a certificate from Wake school officials.

Recognizing the ordinance lacked legislative approval, the current council repealed it but insisted builders of the eight projects continue paying fees set in their zoning agreements, McAlister said. Those fees help offset "millions of dollars" worth of street and other infrastructure improvements the town paid for to accommodate these projects, said council member Julie Aberg Robison.

"Are you going to pay us that back?" Robison asked. "You want the money back? Why did you offer it in the first place to finance schools that are so badly needed in this area?"

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