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## Judge overturns ruling against impact fee ordinance

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A Hamilton County judge this morning overturned a ruling that Westfield's road-impact fee ordinance violated state law.

If Superior Court 3 Judge William Hughes had upheld his ruling, Westfield could have been forced to repay some of the millions of fees it collected.

But Westfield might still have to pay before the four-year legal battle is over.

In April, Hughes had affirmed a court magistrate's summary judgment — meaning no trial was held — that a road-impact-fee ordinance Westfield used from roughly 2004 to 2008 violated state law. Due to a mix-up in dates, Westfield spokeswoman Carrie Cason said the city's attorneys did not attend the summary judgment hearing in April, and she believes that affected the outcome.

While Hughes decided today the case should go to trial, he said Westfield so far had presented no evidence that supports the legality of its ordinance.

Still, Hughes said justice would be better served on a matter of such importance by holding a hearing in which evidence is presented. That hearing could determine whether Westfield's ordinance violated state law and whether a class action lawsuit should be formed with people and businesses that paid impact fees under the ordinance.

No court dates have been set, and attorneys for both sides are now awaiting a written ruling decision further explaining Hughes's oral ruling before deciding their next steps. Hughes said it could come by Friday.

The city collected about \$3 million in road-impact fees under the ordinance, but not everyone who paid fees might be eligible for a refund, Westfield City Attorney Brian Zaiger said. He and Mayor Andy Cook said after Wednesday's hearing they believe the ordinance is legal.

The city along U.S. 31 north of Indianapolis has grown by more than 2,000 residents in the past five years, ranking it among Indiana's fastest-growing communities.

According to the Westfield lawsuit, the trouble started in 2005 when the town charged Gerhard Martens, owner of Westfield-based Metric Seals, \$9,130 in road-impact fees for warehouse space he added to his office at 17030 Westfield Park Road. Metric Seals is a supplier of European and Japanese hydraulic and pneumatic seals.

Martens appealed to the city's review board, saying Westfield was wrong to charge the fees because the warehouse would not increase traffic. The board sided with the city, and Martens sued.

Steve Cook, an attorney representing Martens, said he still plans to move forward with creating a class-action lawsuit. Cook said it makes more sense to hear one class-action case than what could potentially be hundreds of individual cases.

Cook also is waiting for Westfield to provide more information, including a copy of its new road-impact fee ordinance and lists of who paid impact fees and received building permits while the old ordinance was used.

Westfield is one of a handful of communities that charge road-impact fees, including Fishers, Noblesville and Zionsville.

Westfield isn't the only government to face a challenge in court over impact fees. Zionsville lost a lawsuit by a builder's organization and in April returned nearly \$400,000 in park-impact fees the court ruled it had improperly charged area homebuilders.

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