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Judge rules against Westfield on road fees

City will ask court to hold a trial on 'impact' charges

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Westfield might have made a costly mistake.

Ruling on a lawsuit without holding a trial, a Hamilton County judge has found that a road-impact-fee ordinance Westfield used from roughly 2004 to 2008 violated state law.

Now, the city might have to refund some of the millions it collected from developers, businesses and others.

Could losing the lawsuit cost taxpayers' money? It's too early to tell. Westfield will ask the court in July to overturn the decision and schedule a trial.

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.

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.

City spokeswoman Carrie Cason was unsure whether taxes would be raised to repay the impact fees if the city loses the lawsuit.

"It may be nothing," she said of the potential refunds. "It may be zero. We don't think anything was wrong with the 2004 ordinance."

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

Attorney Mike Howard, Noblesville, helped write the state law in 1991 that allowed local governments

to charge park- and road-impact fees. He said they're expensive to implement, have strict guidelines and are aimed at growing communities that approve hundreds of building permits each year.

Indianapolis, Greenwood, Carmel, Avon and Brownsburg are among communities that do not charge road-impact fees.

"There are not many governments who even have road-impact fees," Howard said. "You're not going to have it in a town that issues 14 building permits a year."

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.

Origin of the lawsuit

In Westfield's case, Hamilton Superior Court Judge William Hughes last month decided a class-action lawsuit should be created. He ordered the city to provide information about businesses, developers and residents who paid road-impact fees under the ordinance.

If Hughes refuses to overturn his ruling at a hearing in July, the city plans to go to the Indiana Court of Appeals.

According to the 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.

Additional Facts

What's next

Westfield will ask Hamilton Superior Court Judge William Hughes to change a ruling against the city. The hearing in Noblesville will be at 8:30 a.m. July 29.

What's a road-impact fee?

According to state law, Indiana communities can charge a fee to residents, businesses and

developers for building projects that increase traffic. The communities use the money for road improvements.

Fees add up

Here is a breakdown of Westfield's revenue from road-impact fees for the past five years:

2008: \$407,237.54.

2007: \$432,515.56.

2006: \$909,894.76.

2005: \$908,081.55.

2004: \$586,208.98.

Source: City of Westfield.
