

**NEWS**NewsType Size: [A](#) [A](#) [A](#) [Print](#) [Email](#) [Most Popular](#) [SHARE](#)    [Digg this](#)**Mesa wins key ruling on impact fees on cultural facilities**

by **Jim Walsh** - Jul. 16, 2009 12:00 AM  
The Arizona Republic

Mesa will still be allowed to collect impact fees from developers to pay for the city's cultural facilities, a Maricopa County Superior Court judge has ruled.

The ruling settles a 2-year-old lawsuit by the Home Builders Association of Central Arizona, which contended that Mesa, the only city in Arizona that charges such a fee, had exceeded the scope of a law that allows cities to charge developers for the costs of growth.

"We are disappointed with the ruling. The court failed to address most of our arguments and rubber-stamped the city's actions," said Clint Bolick, an attorney for the conservative Goldwater Institute, which represented the Home Builders Association.

Deputy Mesa City Manager Bryan Raines, however, welcomed the city's victory.

"We think it's a positive move. We thought it was an appropriate fee all along. We have some great facilities," Raines said.

In a ruling released Tuesday, Judge Douglas Rayes said the fee was not arbitrary and that Mesa had the authority to decide what services impact fees should cover.

Bolick challenged the cultural-facilities impact fee in September 2007, noting that Mesa is the only city to impose such a fee, which is generally passed through to new-home buyers.

In his legal challenge, Bolick wrote that cities can only impose development fees that are "necessary public services to a development."

He argued that water, sewer, police and fire services are necessary public services or maybe even a park to serve new residents.

Although cultural services are desirable, they are not necessary and should be supported by general taxation instead of a specific fee against home builders, Bolick wrote.

But Raines said cultural facilities "are an important aspect of any community."

Mesa boasts the Mesa Arts Center, the Arizona Museum of Natural History and the Arizona Museum for Youth as noteworthy cultural offerings.

According to Mesa's response to Bolick's motion for summary judgment, the city decided in June 2007 to increase its development fees to \$8,321 per single family unit from \$5,233 per unit.

But the cultural-facilities fee was decreased to \$218 per new home from \$237 per new home.

Mesa argued that the Legislature left it up to cities to decide which services are necessary and did not specify them in the law.

"The Mesa City Council made legislative findings, after study, open discussion and proceedings, that museums and cultural facilities provide necessary public services. Those findings are presumed valid," Rayes wrote.

"The court finds that plaintiff has failed to show that defendant's imposition of a cultural-facilities impact fee is arbitrary or that it lacks a rational relation to legitimate municipal interest," he continued.

Bolick said he would ask the Home Builders Association for approval to file an appeal of Rayes' ruling.

"We never take defeat as anything more than a momentary setback," he said.

Bolick also predicted the Legislature would intervene quickly if other cities interpreted Mesa's victory as authority to impose their own cultural-facilities impact fees.

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