

APFO lawsuit bound for court March 2009

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CABARRUS - A judge's decision last week will allow the lawsuit against Cabarrus County's adequate public facilities ordinance to move through the standard court process, tentatively set for March 2009.

Three residential developers and the Cabarrus County Building Industry Association are suing the county for the ordinance, which require developers to pay a mitigation fee of \$8,617 per single-family home to help offset the cost of new schools in areas where schools are overcrowded.

Jim Scarbrough, the Concord attorney representing the developers and the CCBIA, said the fee is taxation without proper legislation to do so.

"If the county can tax people without any authority, they can tax you for about anything," Scarbrough said. "Not to mention that fact that it's killing (developers') business, the affordable housing business."

However, the county contends it received special legislation from the North Carolina General Assembly in June 2004, allowing the county to use the methods to address public school facility needs as part of the review of new subdivision requests.

In addition, said County Manager John Day, the fee placed on developers helps to maintain a steadier tax rate for all Cabarrus County residents.

"(Residents) should care if they are concerned about tax rates," Day said.

Day said if the county is unable to regulate growth to help pay for the school needs it creates, then the cost falls to the county tax rate.

"That's a direct offset," Day said. "It's a bottom-line pocket book effect."

In April, Lanvale Properties, developers of a 50-acre subdivision Calais at Red Bridge, filed a lawsuit against Cabarrus County, challenging the validity of the adequate public facilities ordinance.

Now, Craft Development, Mardan IV and the CCBIA are also included as plaintiffs in the lawsuit.

County officials pointed out that the City of Concord and Cabarrus County School are associate members of the CCBIA.

Last week, Judge Mark Klass denied the county's motion to dismiss the case on grounds that the statute of limitations had expired.

He also said that any adequacy fee paid by the developers should be placed in an in escrow account.

Day also questioned the developers' standing in the case as they have not paid the adequacy fee, therein being "harmed" by the ordinance to give the developers grounds for a lawsuit.

To date, Cabarrus County has collected \$5.2 million from the mitigation payments to be use toward new school construction. By 2013, the county expects to have collected \$11.5 million through the residential development fees.

The county has also had 102 acres of land donated for new school construction in lieu of a mitigation payment.