



Union judge's decision may help Cabarrus

By [Eric Deines](#) | Independent Tribune

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CONCORD — Last week, a Union County Superior Court judge sided in favor of the county in a suit filed by developers who claim its adequate public facilities ordinance unlawfully imposes fees on their projects to help pay for school construction.

Cabarrus County officials say the ruling, for which the Union County judge has yet to issue a written response, may be good news for a lawsuit filed against Cabarrus by developers and a building industry organization.

In July, a Cabarrus County judge scheduled a hearing for the suit in March 2009, denying the county's motion to dismiss the case on grounds the statute of limitations had expired.

When asked if he believes the Union County decision will help Cabarrus County's argument, Cabarrus Department of Commerce director Jonathan Marshall said, "I do."

"But it's not an argument. We believe the (N.C.) general statutes allow for adequacy of schools," Marshall said. "We believe it is our responsibility to consider our ability to provide services (when considering growth decisions)."

The plaintiffs in the case against Cabarrus County are Lanvale Properties; Mardan IV; the Cabarrus County Building Industry Association; and Craft Development, which was also a plaintiff in the Union County lawsuit.

While Union County's APFO does differ slightly from Cabarrus County's as to the various options given to developers, Cabarrus County Manager John Day said the two documents share the same author — attorney Mark White, a Kansas City lawyer specializing in subdivision and zoning law.

The Cabarrus County APFO requires developers to pay a mitigation fee of \$8,617 per single-family home to help offset the cost of new schools in areas where they are overcrowded.

Developers may also scale back their developments or wait to build until school space becomes adequate.

In July, Judge Mark Klass also asked that any adequacy fee paid by the plaintiffs to Cabarrus County should be held in an escrow account.

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

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