

# charlotteobserver.com

Comments (0) |  Recommend (0)

## Is APFO working as intended?

By Mike Torralba

mtorralba@charlotteobserver.com

Posted: Monday, Sep. 15, 2008

MONROE Union County's adequate public facilities ordinance, designed to slow residential development in fast-growing areas, has yielded \$147,240 in fees from homebuilders in the last 23 months to help build schools in crowded areas.

County officials say the ordinance, contested in court, wasn't intended to bring in large sums from builders and developers, who pay fees if they build in areas with crowded schools. But county officials and developers disagree about how effective the law has been in its stated purpose: funneling residential growth toward less-developed areas.

County commissioner Roger Lane, who voted for the ordinance in October 2006, acknowledged its effect isn't fully known. But he said he believes it has been "very successful" in discouraging growth in areas where school capacity is strained.

"The proof is that the APFO has brought in virtually no money," he said. "If it brings no money, that means (developers) are building elsewhere."

Developers say the ordinance has played hardly any role in their decisions on where to build and when. They say the sagging economy and the county's limited ability to immediately provide water and sewer service are more important.

Charlotte developer Stephen Pace said the ordinance serves only to drive up construction costs, which already are hit by rising prices for raw materials.

"It keeps the price of a house up. In the long term, it does not accomplish what Union County wanted to accomplish," Pace said.

Plans filed with the county for new homes in Union have been down sharply for the last two years, according to Dick Black, the county's planning director. Between 2002 and 2005, the numbers of lots receiving preliminary approval ranged from 1,300-2,646 per year. In 2006, the county enacted a residential building moratorium as the ordinance was being drafted. Since then, 345 lots have been approved as of early last week.

The reasons for the reduction are complex.

About five months after the law's adoption, the state stopped issuing sewer permits to new developments in the county. Then spare water capacity dried up, along with developers' prospects of quickly getting the needed infrastructure for new subdivisions.

At the same time, the nationwide housing crisis loomed, credit tightened and the economy slowed.

Under the ordinance, developers who want to immediately build more than five homes in a crowded school district must put up a “voluntary mitigation payment” that can be nearly \$15,000 per single-family lot.

Since the law took effect in January 2006, the county has gotten payments under the ordinance for 24 residential lots – a per-lot average of \$6,135 – in four subdivisions, said Lee Jensen, a county senior planner.

Developers and builders sued Union County over the adequate public facilities ordinance in December, 2006.

The lawsuit contends it's an impact fee, something N.C. courts have ruled that counties have no authority to levy. The county says developers aren't required to make the payment and can scale back their projects or delay fully building them until more schools are constructed. They also can donate land for new schools or help with their construction.

So far, no one in Union has agreed to donate land or help build new schools since the ordinance's 2006 adoption, said Don Hughes, Union County Public Schools' facilities and construction coordinator.

On Sept. 4, a Superior Court judge sided with the county. The plaintiffs' attorney has said an appeal is likely. One of the subdivisions to which the ordinance has applied is the second phase of Saye Brook, south of Monroe.

Four homes were subject to the fees, developer Cody Helms said. Helms' firm paid nearly \$7,000 to the county for each house, shouldering half the cost and passing the rest onto the buyers. Homes in Saye Brook range from \$200,000-\$240,000.

“We're uncomfortable doing it because it's an unfair situation,” Helms said.

One recent buyer, Matthew Sawtelle, said he didn't know the fee had been added to the construction cost until questions from a reporter prompted him to check with his real estate agent. He seemed resigned to the fee. He said the added cost would not have affected his decision to buy a house in Saye Brook.

“You're going to die, and you're going to get taxed,” Sawtelle said. “I'm not happy with it, but it ain't going to change.”

It might still, if builders and developers appeal Superior Court Judge Christopher Collier's decision. Dan Higgins, the developers' attorney in Raleigh, said last week he was waiting for the judge to file his order.

Plaintiffs then have 30 days to file an appeal.

A reversal by the appellate court could affect a similar set of cases still in their early stages in Cabarrus County.

Jim Scarbrough, the plaintiffs' Concord attorney, said a successful appeal of the Union ruling would help his cases. He said he knows of only two sets of challenges to adequate public facilities ordinances in North Carolina: the Union lawsuit and his own cases.



[Subscribe to The Charlotte Observer & Earn Miles.](#)

POWERED BY Pluck

You must be logged in to leave a comment. [Login](#) | [Register](#)

Submit

Comments: 0 Showing: Newest first

More comments on this story:

[Disclaimer](#)

The Charlotte Observer is pleased to be able to offer its users the opportunity to make comments and hold conversations online. However, the interactive nature of the internet makes it impracticable for our staff to monitor each and every posting.

Since charlotteobserver.com does not control user submitted statements, we cannot promise that readers will not occasionally find offensive or inaccurate comments posted on our website. In addition, we remind anyone interested in making an online comment that responsibility for statements posted lies with the person submitting the comment, not The Charlotte Observer.

If you find a comment offensive, clicking on the exclamation icon will flag the comment for review by the administrators, we are counting on the good judgment of all our readers to help us.

[Montgomery Mazda](#)  
www.montgomerymazda.com

[Find Charlotte Florists](#)  
Florists.YellowPages.com/Charlotte

Ads by Yahoo!