

Public Finance News

Orange County School Board Wins Impact Fee-Related Court Cases

Homebuilder’s Lawsuit against Orange County Public Schools Sales Tax Construction Program Dismissed



Orange County, in conjunction with the Orange County School Board, last updated its school impact fee beginning in 2006, with the updated fee schedule adopted in October 2007. Following adoption of the updated fee schedule, the Homebuilders Association of Metro Orlando filed a lawsuit challenging that the Orange County School Board failed to comply with a promise it made regarding how it would spend the half-penny sales tax revenue when marketing the sales tax program. Prior to the 2002 referendum, the School Board promised to renovate 136 existing schools and build 25 new schools over the 13-year sales tax period. This construction and renovation plan was developed based on the construction and renovation needs at the time as well as the revenue available to fund these projects.

The premise of the Homebuilder’s lawsuit stems from the fact that the School Board changed its funding program and built only one new high school with sales tax revenue, while using sales tax to fund the District’s extensive renovation program. The updated school impact fee calculated a revenue credit based on the District’s actual five-year Capital Improvement Program for FY 2007-FY 2012, reflecting Certificates of Participation (debt service) as the primary source for funding the construction of new schools. The lawsuit contends that the credit for the impact fee would be higher if the sales tax revenue were actually used to construct the new schools. However, an analysis completed by TOA confirmed that the revenue credit for the school impact fee is essentially the same whether sales tax or Certifications of Participation are the revenue source used to build the new schools, as the amount of the credit is based on the total amount expended for construction rather than the specific source of revenue.

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In December 2009, Circuit Judge Thomas Turned dismissed the Homebuilder's lawsuit, ruling that "[t]he School Board has utilized the proceeds from the surtax to renovate and construct schools in accordance with the provisions of the ballot."

Orange County Wins Lawsuit Concerning Alternative Calculation of School Impact Fee

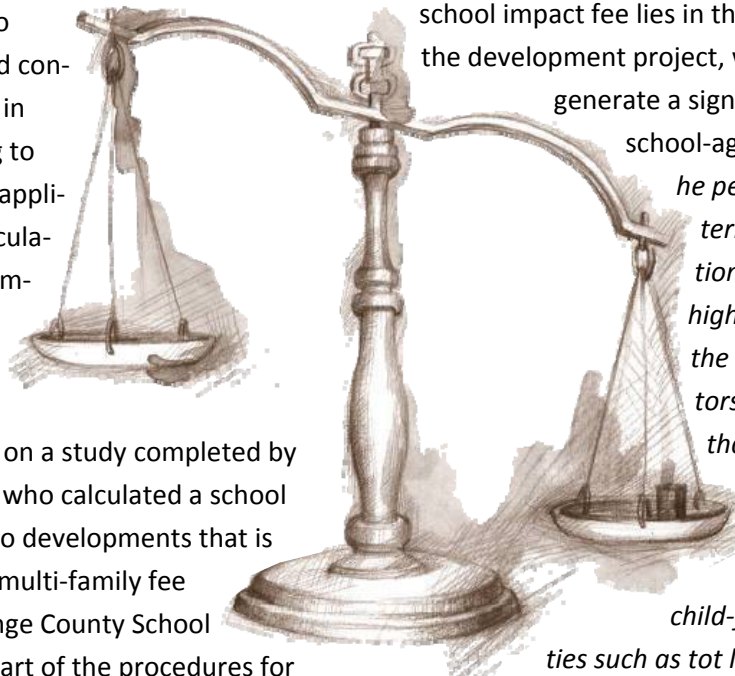
In February 2010, the Orange County Circuit Court dismissed a lawsuit filed by two developers of mixed-use and condominium highrises located in downtown Orlando, seeking to overturn the denial of their application for an alternative calculation of the County's school impact fee.

The Petitioner's alternative fee calculations were based on a study completed by an independent consultant, who calculated a school impact fee rate for these two developments that is significantly lower than the multi-family fee rate established by the Orange County School Impact Fee Ordinance. As part of the procedures for conducting an alternative study set for in the adopted ordinance, the applications for the alternative fee were reviewed by the Superintendent of Orange County Public Schools (OCPS), who evaluated and ultimately rejected the proposed alternative school impact fee rates calculated by the consultant. The Petitioners appealed OCPS's decision to the Orange County Development Review Committee (DRC) and the Orange County School Board. Both the DRC and the School Board voted unanimously to reject the alternative fee applications. Following the unsuccessful appeals process, the Petitioners

filed a lawsuit to overturn the denial of the alternative fee calculation.

The County's School Impact Fee Ordinance states that the alternative study shall be based "solely on the consideration that the permanent physical characteristics or limitation of the dwelling units within the residential construction will generate less students initially and during their useful life than the student generation assumptions utilized in the impact fee study."

The Petitioners' basis for calculating an alternative school impact fee lies in the physical characteristics of the development project, which they contend will generate a significantly lower number of school-age children. Specifically, "[t]he permanent physical characteristics of the projects ... location in the downtown Orlando high-density urban core.... that the units are accessed by elevators as opposed to stairwells; that the projects have associated parking garages/ structured parking; and the lack of playgrounds and child-friendly recreational amenities such as tot lots."



In this case, the Circuit Court upheld the School Board's decision to deny the alternative fee application based on the fact that the applications did not meet the requirements of the Ordinance. While the Petitioners argue that specific physical characteristics and limitations of their development will result in a significantly lower student generation, these characteristics and limitations are features of the development project as a whole, as opposed to characteristics of the dwelling units themselves, as required by the County Ordinance.

Pasco County Mobility Fee Development

TOA has been selected to conduct a multi-modal mobility/impact fee study for Pasco County, Florida. The focus of the study's initial phase includes:

- Review of multi-modal studies adopted by other jurisdictions;
- Evaluate the viability of adopting fee schedules that vary by subarea due to differences in:
 - travel demands;
 - quantity of infrastructure system provided;
 - quality of services;
 - source of travel (e.g., local, regional, pass-through);
 - revenues from existing sources to provide system capacity (e.g., gasoline taxes, sales tax, etc.); and
 - potential of currently unused revenues (e.g., ad-valorem based taxes, unused but available gas tax, and infrastructure surtax).
- Develop alternative mobility fee structures that account for the variables mentioned above as well as the desire to encourage certain types of development within the County.

The study scope also includes several presentations/meetings with the County's project steering team, and revenue projections.

TOA Authors Article Series Addressing SB 360

Over the past 12 months, the development and passage of SB 360 (also known as the "Community Renewal Act") has generated many questions from the perspectives of both public agencies and the private sector. In an attempt to highlight the key issues and questions resulting from the passage of SB 360, TOA has authored a series of articles on various subjects surrounding the bill that are pertinent to local government.

The first article, "Replacing Transportation Concurrency with a Mobility Fee," focuses on the initial issues and potential concerns related to the replacement of a development review process for transportation impacts (i.e., concurrency) with the payment of a standardized fee.

The second article, "Factors that Will Need to be Considered in Transitioning from a Road Impact Fee to a Mobility Fee," consists of two parts: the first provides a discussion on the technical methodology for calculating a mobility fee and the factors that should be considered when transitioning from a road impact fee to a mobility fee; the second provides a discussion of the factors contributing to the variability in road impact fees in Florida.

The third article, "Key Issues Guiding Mobility Fee Discussions," provides a summary of the key issues and concepts of which local governments should be aware, essentially highlighting the "big picture" topics under which all issues related to concurrency exceptions and mobility fees with regard to SB 360 likely will fall.

TOA's entire SB 360 article series can be found on its website:

www.tindaleoliver.com/SenateBill360.html





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Collier County Parks and Recreation Master Plan (Project Highlight)

TOA is currently in discussion with Collier County to develop a Parks and Recreation Master Plan. This effort will consist of documenting the County’s existing parks and recreation inventory, completing a comprehensive needs assessment, and developing a master plan identifying the facilities needed to serve growth over the 10-year and build-out planning horizons, as well as the identification of target locations for new parks.



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