

DURHAM CITY COUNCIL

FINAL DECISION UPHOLDING THE DETERMINATION OF THE MANAGER'S IMPACT FEE APPEAL COMMITTEE IN AN APPEAL FILED BY ROBIN T. CURRIN ON BEHALF OF PHILLIPS DEVELOPMENT AND REALTY

The Durham City Council ("City Council") held a public hearing at City Council's regularly scheduled meeting on March 17, 2014 to consider the impact fee appeal ("Appeal") filed by Robin T. Currin on behalf of Phillips Development and Realty ("PDR") of a determination by the Manager's Impact Fee Appeal Committee to uphold the impact fees assessed against the Phillips Research Park apartments ("Apartment Project") by the Durham City/County Inspections Department ("Inspections Department"). PDR was represented by counsel at this hearing.

Having considered and having heard the evidence and arguments presented by City staff, by PDR, and by other interested parties, City Council makes the following findings of fact and final decision regarding this appeal:

FINDINGS OF FACT:

1. The original site plan application for the Apartment Project was submitted to the City on November 27, 2007.
2. City Council passed ordinance #13564 on March 17, 2008 making certain increases to the City's impact fee schedule effective July 1, 2008.
3. City Council passed ordinance #13592 on May 5, 2008 making certain increases to the City's impact fee schedule effective July 1, 2008 with additional impact fee schedule increases effective on July 1, 2009.
4. Pursuant to properly approved City ordinances (#13564 and #13592) certain impact fee increases became effective on July 1, 2008.
5. The Development Review Board approved the site plan for the Apartment Project on June 19, 2009.
6. Pursuant to a properly approved City ordinance (#13592) certain impact fee increases became effective on July 1, 2009.
7. Pursuant to City Code of Ordinances ("City Code") § 30-84(a), the Inspections Department is to determine the impact fees due on new construction "at the time of building permit application."

8. Further, the City Code states that in “the event that the impact fee schedule is changed, the city will assess the impact fee based on the fee schedule in effect at the time developer submits a completed building permit application in a form approvable by the city without further modification” See City Code § 30-84(d)(9).

9. An initial building permit application was submitted for the Apartment Project on November 23, 2010.

10. The Apartment Project developer requested by letter dated September 7, 2011 that the initial building permit application be voided due to the application’s inconsistencies with the approved site plan for the Apartment Project.

11. A subsequent building permit application was submitted for the Apartment Project on October 17, 2011.

12. Building permits were issued for the Apartment Project on February 24, 2012.

13. PDR secured financing for the Apartment Project from the United States Department of Housing and Urban development on September 19, 2012.

14. PDR filed its impact fee appeal pursuant to City Code § 30-87 on November 12, 2013.

15. Having following the required procedure, the Manager’s Impact Fee Appeal Committee (“Committee”) issued its written decision on January 6, 2014 upholding the impact fees assessed on the Apartment Project by the Inspections Department because the Committee found that the Inspections Department applied City Code § 30-84 “as written.”

16. PDR appealed the Impact Fee Appeal Committee’s decision pursuant to City Code § 30-87 on January 14, 2014.

17. City Council properly conducted a hearing on March 17, 2014 as required by City Code § 30-87 and heard the arguments and received the evidence presented by City staff, by PDR, and by other interested parties and made a final decision regarding PDR’s appeal.

CITY COUNCIL’S FINAL DECISION:

Having considered the evidence and the arguments presented at the hearing, City Council by a vote of 6-1 confirmed the Manager’s Impact Fee Appeal Committee’s decision upholding the impact fees assessed on the Apartment Project by the Inspections Department. The evidence and arguments presented indicate that the assessment of impact fees against the Apartment Project by the Inspections Department was done so in full conformance with City Code § 30-84, and that there is no legal basis supporting a waiver of the impact fee requirements as they pertain to the Apartment Project.

This decision will be delivered to the appealing party in conformance with City Code § 30-87.

An appeal of this decision shall be filed pursuant to City Code § 30-87 in Durham Superior Court within 30 days after receipt of City Council's final decision by appellant.

This final decision is effective upon and after the date of its adoption as shown by the stamp of the City Clerk below.

NORTH CAROLINA
DURHAM COUNTY

I, _____, Notary Public of the aforesaid County and State, certify that personally appeared before me this day _____ City Clerk of the City of Durham, who duly certified and acknowledged that the foregoing constitutes a true and accurate copy of the final decision adopted by the City Council of the City of Durham at its meeting held _____, 20____.

Witness my hand and notarial seal, this _____ day of _____, 20_____.

Notary Public

My Commission Expires