

From: Maybank, Burnet R. III <BMaybank@nexsenpruet.com>
To: Maybank, Burnet R. III <BMaybank@nexsenpruet.com>
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State Supreme Court ruling rekindles homebuilders' lawsuit against Dorchester District 2

• By [Diane Knich](#) and [Glenn Smith](#)

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An S.C. Supreme Court ruling Wednesday has breathed new life into two homebuilder groups' fight against an impact fee levied by Dorchester District 2 to help pay for new school buildings.

A circuit judge in 2011 dismissed a lawsuit, brought in 2009, by the groups that questioned whether the district charging a \$2,500 impact fee on new homes built in the district was constitutional.

The Supreme Court reversed that ruling and ordered the lower court to hear further arguments in the case, stating that some issues of fact raised by the groups must be explored before determining the constitutionality of the law that allowed the fee.

The suburban district needs new schools to serve the rapidly growing part of Dorchester County. It has been collecting impact fees from developers and home builders since a piece of special legislation filed by Sen. Mike Rose, R-Summerville, passed in 2009.

District spokeswoman Pat Raynor said so far, the district has brought in \$6.7 million from the fees, which it is holding in a reserve fund until the case is settled. District lawyers are reviewing the ruling, Raynor said, so the district isn't yet sure what its next steps will be.

Phillip Ford, executive vice president of the Charleston Trident Home Builders, said lawyers for his group and the Home Builders Association of South Carolina also are reviewing the ruling and considering their next steps. But, he said, the ruling was good news. "We think it validates our position that the way they put in place the impact fee was unconstitutional. It shows there is merit to our case."

The associations filed the lawsuit in 2009, arguing that the special legislation passed to create the fee wasn't constitutional because it bypassed existing general legislation that already governs impact fees.

That legislation says that counties and municipalities can't assess impact fees for schools, but doesn't address whether individual school districts can. The associations argued that taxes such as the fee should be approved statewide only.

The homebuilders groups have argued that it's unfair to dump a disproportionate share of the cost of new schools onto people who ultimately purchase new homes, while district leaders have said that families moving into new homes is what's fueling the demand for new schools.

Reach Diane Knich at 937-5491 or on Twitter [@dianeknich](#) and Glenn Smith at 937-5556.

Burnet R. Maybank, III
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, SC 29202
T: 803.540.2048, F: 803.253.8277
Cell: 803.960.3024
bmaybank@nexsenpruet.com
www.nexsenpruet.com

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