

Exhibit 5.

BAKER
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September 27, 2001

Confidential attorney/client communication

Mr. Steve Lutz, City Manager
The City of Powell
47 Hall Street
Powell, OH 43065

Tyler Run Elementary - City Development Fee For
This Project: \$21,840.90

Dear Mr. Lutz:

You have asked us to review Ohio law to determine whether the City of Powell (the "City") has the authority to impose a development fee on the Olentangy School District (the "School District"). Based upon our research we conclude that under a properly constructed ordinance the City can impose a development fee on the School District.

The City's Planning and Zoning Code states that the development regulations (which include Section 1105.07 imposing the development fee in question) apply to any improvements or development of land in the [City] except (1) construction of a single family or multi-family dwelling on a platted or subdivided lot, or (2) alteration or modification of work on an existing structure that does not change the site improvements. Section 1101.02 (b). Since the Code provides specific exceptions to the development regulations, and does not include construction of public schools within those exceptions, it follows that the development regulations apply to school districts. Further, in our review, we did not find an Ohio statute that specifically exempts school districts from paying impact fees.

Mr. Tarullo, counsel for the school district, states in his letter dated July 5, 2001, that the since the development fee schedule refers to only residential, commercial and industrial subdivision development, the fee is not applicable to a public school facility. We do not agree with Mr. Tarullo's analysis. The City's primary authority to impose the fee is in Section 1105.07, which does not differentiate between types of development. The fee schedule references residential, commercial and industrial developments for the purpose of determining the amount of fees to be collected.

The City's zoning districts are divided generally into Residential, Commercial, and Industrial districts. "Commercial developments" and "industrial developments" are not defined in the Code. However, Section 1143.15 states that permitted uses for Planned Commercial Districts include "community facilities such as libraries, offices or educational facilities operated

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by a public agency or government". As a permitted use within a Planned Commercial District, school construction may fall within the definition of "commercial developments". While the fee schedule might list other types of development within the City, tying the fee payment according to the three basic zoning classifications obviates the need to list on the development fee schedule every type of possible development that could occur within the City (i.e. schools, convalescent homes, social organizations, warehouses, etc.).

The basis of the School District's analysis that it is not subject to the development fee is the balancing test outlined in Brownfield v. State of Ohio, 63 Ohio St.2d 282 (1980). In Brownfield, the State of Ohio purchased a single-family residence situated in a single-family residential use district in Akron for use as a half-way house. The court held that a state agency with eminent domain power can be immune from a zoning ordinance if the state agency can prove it has made a reasonable attempt to comply with the zoning restrictions of the political subdivision and a court has examined (i) the essential nature of the government-owned facility, (ii) the impact of the facility on the surrounding property, and (iii) the alternative locations available for the facility, and has determined that compliance with zoning laws would frustrate or significantly hinder the public purpose underlying the acquisition of property. Id. at 286-287. The court also stated that "unless a municipality completely prohibits a certain use within its corporate limits, the state may acquire property for that use and still comply with local zoning restrictions". Id. at 285.

The holding in Brownfield can be distinguished from the School District's position since the court's analysis was based upon zoning restrictions on use, rather than upon the payment of fees for the purpose of offsetting the impact that the construction of the school would have on the City's infrastructure. Even if it does apply, the imposition of a development fee that is otherwise legal would hardly "completely prohibit" the use of land as a school.

Therefore, as long as the development fee is properly imposed, we have found no authority to indicate that the School District should be exempt from paying the development fee.

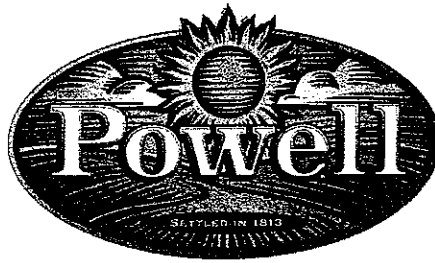
Please contact me if you have any questions or would like to discuss this matter further.

Very truly yours,



Pamela A. DeDent

cc: Michael E. Minister



MEMORANDUM

TO: FINANCE COMMITTEE
FROM: STEVE LUTZ, CITY MANAGER *sl*
DATE: OCTOBER 3, 2001
RE: TYLER RUN ELEMENTARY - CITY DEVELOPMENT COSTS

City incurred expenses associated with the Tyler Run Elementary School includes:

A) WORK AT SCHOOL (Salisbury at front of school)

1.	Sidewalk/Ramps	\$6,638.75
2.	Signs	613.40 (installed by City)
3.	Pavement Markings	1,140.00

B) WORK AT SALISBURY/PRESIDENTIAL
WORK AT GRANDSHIRE/PRESIDENTIAL

1.	Asphalt Path	\$4,263.00
2.	Signs	429.30 (installed by City)
3.	Pavement Markings	716.00

TOTAL **\$13,800.45 plus City Labor**

