

## Impact fee trial to start More than \$30 million in fees now held in escrow



By Ed Scott News-Gazette Staff Writer

How Osceola County pays for future schools will be at stake Monday as a lawsuit over increased impact fees begins in Osceola circuit court.

A group of plaintiffs — the Home Builders Association of Metro Orlando Inc., the Florida Home Builders Association, Robertson Homes Inc., Wetherington Builders Inc. and ARNCO Construction Inc. — filed suit last year against Osceola County. County commissioners at the request of the School Board had voted unanimously in December 2003 to raise school impact fees from \$2,828 to \$9,708 (per single-family home), among the highest in the state.

"We think that increase is not justified," said William Hyde, attorney for Fowler, White, Boggs, Baker of Tallahassee, the firm representing the homebuilders.

After the suit was filed in April 2004, the county and School Board entered into an interlocal agreement to be represented jointly by one firm, Nabors, Giblin & Nickerson P.A. of Tallahassee.

Local officials can't say much publicly about the pending litigation.

"We have to go through this process," School Board Chairman John McKay said. "The (May) mediation didn't pan out. Hopefully it will be a short trial and we can move on. I really hope there isn't any appeal. I hope, if the decision goes in favor of the county, that the homebuilders won't appeal it."

The non-jury trial, held in the courtroom of Judge R. James Stroker, could last about four days, School Board attorney Suzanne D'Agresta said.

Impact fees are paid by developers of new homes who pass the extra costs on to their buyers.

The revenue generated by the fees per household, minus the \$2,828 not in question, has been held in escrow.

Through May, more than \$30 million was in escrow, according to Rick Collins, school district assistant superintendent for business and fiscal services. The escrowed amount could increase to about \$60 million a year from now, he said.

In their lawsuit, the builders groups contend that the Osceola County school impact fees are unconstitutional and were miscalculated. The groups, which are asking for the increased fee to be overturned, also say the traditional methods in which school impact fees are calculated were not used in the Osceola County School District study that recommended the increase.

That study was done by Redmond, Wash.-based consulting firm Henderson, Young & Co. Randy Young of that firm is scheduled to be a witness in the trial.

The higher school impact fees went into effect May 1, 2004. Plaintiffs are seeking a refund of all increased fees collected.

Meanwhile, Commission Chairman Paul Owen said the county is confident that the consultant used the right methodology in arriving at the impact fee numbers.

"We're ready to defend our position on Monday and feel very confident, according to what's happened in some of the counties around us, that the impact fees will stand the way they are," he said.

Industries involved in homebuilding view the lawsuit as a test case in Florida. Other counties in Central Florida charge the following amounts in school impact fees for single family homes: Lake County, \$7,055; Orange County, \$7,000; Volusia County, \$5,443; Brevard County, \$4,445; and Polk County, \$1,607.

Historically, the Osceola County Commission has approved only 60 percent of recommended school impact fees, but in December 2003 it approved the entire recommended increase.

The county had raised the fee in 1999 to \$2,828 from \$1,022 for each single-family home. A fee study at that time

suggested a \$4,200 impact fee.

Many schools are overcrowded — or reaching that point — in Osceola County, one of the fastest growing and lowest funded school districts in the state.

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