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Osceola school-impact fee's fate to be decided by judge

Trial pits builders against county over \$9,708 levy.

By Elaine Aradillas
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KISSIMMEE -- A judge will decide whether the state's highest school-impact fee on new homes in Osceola County is constitutional in a nonjury trial that begins today.

At stake in the case, county officials say, is the school district's ability to build new classrooms fast enough to keep up with growth without unfairly burdening people who pay property taxes. Home builders say the real issue is double taxation on the buyers of new houses.

The Home Builders Association of Metro Orlando sued Osceola County in April 2004, challenging a 243 percent increase in its school-impact fee, which forced other counties across the region to take notice. The \$9,708 fee, approved in December 2003, took effect the next May.

Last spring, Orange County raised its school-impact fee to \$7,000, which was lower than what officials acknowledged they needed to avoid a similar lawsuit, officials said. Lake and Volusia counties also kept their school fees well below Osceola's -- at \$7,055 and \$5,284.

The suit claims that Osceola's methodology used in calculating the new fee included incomplete data and faulty assumptions determined by a consultant hired by the Osceola County School District.

William Hyde, one of a team of lawyers representing the home builders association, said the county's formula eliminated all credits for future taxes and fees, requiring them to pay twice for the same impact.

"In some instances, they're [impact fees are] justified," Hyde said. "In this instance, we think we're being overcharged."

Ken Shipley, one of the county commissioners who voted to approve the higher fee, said it is necessary to keep up with the new neighborhoods mushrooming throughout the county.

"I thought raising impact fees would slow them down," he said. But Shipley pointed to a stretch of Neptune Road where builders plan 30,000 new homes as evidence that proves otherwise.

"If you want to move into a county that cares about growth, then this is where you come to," he said.

An outside attorney representing Osceola County in the case said Friday that he preferred not to comment before the trial, referring a reporter to county staff.

The thousands of families flooding into Osceola, the fastest-growing county in Central Florida, mean more students who need more schools. The school district broke ground on five new schools in a five-week period earlier this year. It already has 559 portable classrooms at its public schools, and officials plan to add 75 more before the start of the upcoming school year.

School officials are running out of ways to keep up with a district that has grown 27 percent in the past four years, said Mike Horner, president of the Kissimmee/Osceola County Chamber of Commerce. The district's growth is almost three times the state average.

Property owners pay school taxes, and the district receives 25 percent of the seventh cent of the county's sales tax.

"The school district has maximized every opportunity available to them to pay for new construction," Horner said. "New growth is going to have to help pay for itself."

For years, Florida courts have seen a stream of lawsuits filed by home builders against local governments and the fees imposed on them. In turn, the state Supreme Court has upheld the principle of school-impact fees.

But in recent years, the lawsuits have started targeting the methodology of calculating fees.

David Theriaque, a lawyer in Tallahassee and an expert in land-use and growth-management issues, said the arguments from both sides are common and are beginning to focus on the formula.

"What you end up having is a battle of the experts arguing to the judge whether the numbers worked," he said. "The devil is in the details, like anything else."

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