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OUR OPINION

## Close the loophole to help schools

Marion County Commissioner Jim Payton offered a remarkable observation last week, although he steered clear of elaborating on any details. As commissioners were finalizing regulations to levy a school impact fee on developers, Payton noted that he knew of two recently approved developments that might serve as attempts to skirt the fee -- which is currently proposed for about \$8,000 for each new single-family home.

How? Well, a developer could classify a subdivision as a retirement community, which are exempt from school impact fees on the theory that there are no children to affect the school system. But once designated as such, the developer could change in mid-stream, selling homes to families with small children and avoiding the fee.

We must say we are shocked -- shocked -- at the insinuation that a developer in Florida would create such a clever ruse to reap more profits. In this state, perish the thought.

But, with tongue out of cheek, we note that Payton did expose a loophole that, to the board's credit, it is moving to slam shut.

Commissioners ordered the county Planning Department to draft regulations that would allow them to recoup impact fee money, which could run into the millions, if a development changes over time.

Planning Director Dwight Ganoë told us that, based on information culled from other counties with similar rules, the community would have to meet the county's definition as retirement-only or age-restricted and be identified as such in its legally recorded covenants for a set period of time, say 30 years. If the developer breached those covenants by allowing young families in before the deadline, the fee ban would be void and the county could charge that amount for each individual unit, Ganoë said. The county is also banking on the fact that residents of an age-restricted community would want to see it kept that way after all the homes are built.

It's unclear where the ban on collecting school impact fees for retirement communities originated, but it might stem from a Florida Supreme Court decision in 2000 involving Volusia County and a Daytona Beach developer.

In that case, according to a story in Education Week magazine, Volusia school officials maintained an 84-unit mobile home park did affect their schools because its residents could participate in adult education programs or use schools as a hurricane shelter. The developer maintained his park's deed restrictions prohibited anyone under 18 from permanently living there and subsequently there was no benefit to residents from future school construction.

The Supreme Court sided with the developer, saying in its decision "where residential development has no potential (emphasis added) to increase school enrollment, public school impact fees are unwarranted."

Still, the decision contained two interesting points. First, the court acknowledged that deed restrictions are often ignored and enforcing them can be problematic because residents must sue in court to police scofflaws. Second, the justices noted that "local governments, especially rural counties and small municipalities, are ill-equipped to craft legal innovations in revenue generation while meeting the everyday needs of citizens." Thus, "state legislation defining the proper use of impact fees could ease the burden on local governments and provide a more predictable environment for developers."

Lawmakers could address this dilemma with legislation allowing counties to levy school impact fees on new growth, including retirement-only communities.

Such a law would be fair and remove all doubt and the temptation for scheming. It would also make common sense.

It's true impact fees are supposed to be spent to benefit those who paid them. But Marion County's 55-plus population pays property taxes for schools because they, like all of society, benefit from a good education system that turns out smart, better workers. Imagine the reaction if younger workers balked at funding Medicare or Social Security.

Fortunately, Marion County is positioned to make this argument. State Rep. Larry Cretul of Ocala was recently named to a legislative task force studying the state's impact fee system. Cretul's group should look closely at ways to help school districts meet the needs of pending growth.

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