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Commission alert against developers exploiting loophole

County fears homes labeled as adult-only to dodge school fee

Ocala - The new development promises golf courses, tennis courts and other amenities for the active adult lifestyle. No children. No one under 55.

Because it's a retirement community, the developer would be exempt from paying education impact fees or other charges intended to offset the community's impact on nearby schools.

But over time, after Marion County has approved the plans, the development evolves into a different animal. Plans no longer call for an age-restricted community. The development is open to everyone, including children.

That's exactly the scenario that the County Commission is trying to avoid, and is taking steps to prevent. Commissioners and county staffers are developing safeguards to ensure that developers don't skirt new rules requiring them to pay education-related charges.

If a development escapes the costs, it could mean the loss of millions of dollars for the school system, which is struggling to build new schools and fix old ones.

"That could be very detrimental to us, even if it's a 500-home subdivision," said School Board Chairwoman Sue Mosley.

A change in state law this year requires developers to provide funds or other contributions to the School Board to offset the impact from new homes. As a result, the county is requiring that the payment - which is being determined by county and school officials - be included in the development agreement.

Until now, the school system had not received funding to build new schools or expand existing ones when a new development was approved. Struggling to find money, the district has levied a sales tax and proposed borrowing more money. It is also in the process of determining an impact fee on each new housing unit.

An \$8,000 per single-family home fee, which has been suggested, would generate \$8 million dollars from a 1,000-home subdivision.

But commissioners Tuesday said they want to insure that developers don't circumvent the fees by claiming they intend to build retirement communities - which the board agreed would be exempt from education-related charges - then change plans after receiving approval.

The way it works now is that commissioners sign off on land use or zoning changes, but a change in a development's overall demographic or age restriction does not require coming back before the board.

County Planning Director Dwight Ganoë - who was directed by commissioners Tuesday to rework some contractual language regarding the school-related fees - said developers would need additional consent by commissioners if changes to the development's deed restrictions or covenants were made.

If a development actually dropped its age-restricted plans, the developer would be required to pay back the school concurrency fees, Ganoë said.

County officials said the trick lies in catching developers early in the process, before housing units are permitted. Tuesday, County Attorney Gordon Johnston said he didn't believe the commission had the legal right to recapture lost funds once permits are issued.

Once homes are sold and a development takes form, county officials believe the chances of a community changing is highly unlikely.

"If you have a huge retirement community out there and it requires 99 percent (of homeowners) to go to a non-retirement community, you're pretty safe," Ganoë said.

While he wouldn't name them, County Commissioner Jim Payton said he knew of at least two recently approved developments that may try to change their planned retirement communities to standard developments.

In August, during the county's large-scale land use change hearings, Payton accused attorneys representing developers of tailoring their presentations by interchangeably using the word "retirement communities."

Commissioner Randy Harris, who agreed Friday that agreements needed to clearly spell out the consequences for changing plans, said he expects some developers will try to avoid the new charges.

"Yes, I think that possibility exists," he said.

Land use attorney Landis Curry Jr., who has represented a number of retirement community developers, said he couldn't recall any recently switching their plans to do conventional housing.

He said the only time he remembered that happening was in the 1980s, when developers were unable to meet stringent federal housing demands placed on retirement communities.

Curry said he believed developers would react favorably to the new safeguards as long as the language in the agreement was reasonable and clearly spelled out the consequences.

"If a development allows children in its households, they should have to pay," he said.

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