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County, builders argue in court over impact fees

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By Ed Scott News-Gazette Staff Writer

How should property taxes have been used in the formula that set Osceola County's school impact fee at \$9,708 for each new home?

That's the principal question Circuit Judge R. James Stroker considered this week while hearing testimony in a lawsuit filed by state and local home builder associations against Osceola County.

Attorney Linda Loomis Shelley, who represents the home builders, said the builders are not asking that 100 percent of property taxes paid by homeowners be factored into the impact fee formula as a credit, but that the county's position to not credit any of those taxes over a 25-year period is untenable.

The Osceola County School District currently uses a portion of property taxes it receives to pay interest on bonds — called certificates of participation — it sells to build new schools.

Shelley argued that because those property taxes go toward new schools (the same as impact fees), home builders should receive a credit, and pay a lower impact fee, to avoid paying twice.

"They're not being asked to pay twice. They're just being asked to pay their fair share," said attorney Gregory T. Stewart, representing the Osceola County School Board and County Commission. "What they are being asked to pay is only for that student station to serve (the new home owner)."

Stewart, attorney for both the School Board, which requested the fee increase, and the County Commission, which granted it, said that when property tax revenues are used to repair existing facilities or to maintain existing facilities, that revenue is part of the general tax base, to which every homeowner in the county contributes.

Home builders filed the lawsuit after the County Commission voted to increase school impact fees from \$2,828 to \$9,708 — the highest in the state — in December 2003. Home builders pass the fee along to home buyers.

The judge heard Monday from six witnesses for the home builders, including three experts and three local developers. Charles Robertson (Robertson Homes), Don Wetherington (Wetherington Builders) and George W. Arnold (Arnco Construction) mostly testified about the types of homes they build and the effect the increased fee has had on their customers' ability to afford extra amenities in their custom homes.

"When people contact us, they have a number in mind," Robertson said of the price of new homes. "If the impact fee is raised \$7,000, that's \$7,000 in products (not purchased)."

Several years ago Wetherington served on an Osceola County school facilities task force that recommended that new growth pay for 100 percent of its impact. But the citizens group did not recommend an impact fee amount.

"There is no argument in our industry that we should not pay 100 percent of our impact," Wetherington said of home builders. "The question is: what is 100 percent? What is that number? We don't believe the homeowner should be double taxed."

The builders also said that the impact fee increase might keep some lower-income residents out of the market for new homes. But under cross-examination none stated specific examples of potential customers walking out when they learned



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about the increase.

The experts included Douglas P. Buck, director of governmental affairs for the Florida Home Builders Association; Edward T. Wolpert, an economist with Raffa Consulting of Orlando; and Timothy L. Lunney, an urban planner based in Coral Springs.

Home builders are hoping Stroker will declare unconstitutional the formula used by consultant Randy Young, of Henderson, Young & Co. of Spokane, Wash., to calculate the fee increase.

Under state law, impact fees may be no more than the government's costs to provide infrastructure for new developments, and the new development must benefit from the fees it pays. While home builders may have agreed to the old fee, they have never agreed with Young's methodology, Shelley said. Buck is concerned that if this impact fee increase were upheld, other counties would follow Osceola County's example.

"This case is the most clear example that there are no credits being recognized and there is concern that these types of methodologies will spread to other jurisdictions," he said.

"The reason that there is no credit in this case is that the (Young) study used faulty assumptions," Lunney said, adding that he finds it illogical that homeowners would see part of their property taxes "being used to retire debt that is used to build schools, and not receive any credit whatsoever."

Stewart said much of the district's debt will be retired by impact fees, not property taxes.

Testifying for the county Tuesday were Blaine Muse, school district superintendent; Rick Collins, assistant superintendent for business and fiscal services; Young; and Stanley K. Smith, an economics professor from the University of Florida who conducted statistical research for the county.

Stewart, representing the county and School Board, said the real issue in this case is that "an impact fee has to provide the student station for new growth and (the fee) cannot exceed the cost of that student station. That is what the law requires.

"What the home builders want to do is they want to sit there and they want to talk about other uses of revenues. They want to talk about paying for maintenance on buildings or renovations of other buildings (with property taxes) and somehow they should get a credit, so they don't have to pay their fair share."

Both sides admit there are many considerations when calculating impact fees, but it will be Stroker who decides which approach is appropriate. Testimony in the trial was expected to end this week. It's not clear when the judge will rule on the case, although he told attorneys Tuesday that there is "an area that I may need more evidence on, that neither one of you touched."

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Walls go up on Habitat house



News-Gazette Photo/
Marvin G. Cortner
Approximately 25 employees in the Osceola County Sheriff's Department along with employees from other area companies on Saturday raised the walls as the first order of business in a Habitat for Humanity Osceola County project at 1601 Ohio Ave. in St. Cloud.

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