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## Court upholds decision backing school impact fees

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June 2, 2005

Lee County schools won a major court victory Tuesday when the Second District Court of Appeals upheld a local court decision supporting school impact fees, which are used to build new schools in the rapidly growing district.

County commissioners hailed the ruling as a victory for school children. The school district expects to build 41 schools in the next decade to accommodate 64,000 new students, growth that nearly would double the student population.

County commissioners implemented school impact fees — \$2,232 for every single-family home — in December 2001. Impact fees are one-time payments local governments use to offset the impact of residents of new development on infrastructure. Lee County collects fees for roads, parks, fire and emergency medical services and schools, as much as \$7,131.33 for a single-family home, depending on the fire district.

The county collected around \$80 million in such fees last year, money that only can be spent to provide infrastructure.

School board attorney Keith Martin said the victory means the district doesn't have to worry about refunding the money to homeowners who already have paid. The fees are collected by the county and passed to the school district. Commissioners started distributing the money after they won the local lawsuit, but if the appeal had been successful, the money would have had to be refunded.

When commissioners adopted the school fees, they were projected to yield around \$12 million annually. With \$19.2 million collected during the first six months of the 2004-05 fiscal year, this year's pot should triple that. Last year, the fees produced almost \$32 million to build schools.

Tuesday's decision upholds the methodology fashioned in 2001 by consultants Duncan & Associates, the Texas firm that has done the bulk of the county's impact fee work.

The county defended those calculations during a weeklong trial last March. Builders had hoped to use a victory here as a wedge to challenge fees elsewhere. Florida law contains no impact fee regulations, and case law governs their creation.

"This sets the stage for unbridled impact fee increases," said Michael Reitmann of the Lee Building Industry Association, which drove the suit until attorneys got it declared a class action. "Unless you go to court, and the court will rule against you. This was the case that was going to set the precedent. Now local governments will do whatever they want using whatever kind of data they want."

In the local court decision, Circuit Judge James Seals was critical of the data the consultants used but said he must uphold the legislative body as long as its actions were fairly debatable.

"As long as it's not intent to defraud, they can use whatever data they want," Reitmann said.

The building industry supported legislative efforts to cap and standardize impact fees in Florida this year, but the effort fell short. Reitmann said he expects the effort to be revived next year. Builders and housing advocates say impact fees drive up the cost of housing for those who can least afford it, knocking thousands out of the housing market.

Lee County's impact fees are eighth highest among Florida's 67 counties. Collier County collects \$9,982 in non-utility impact fees, third highest in the state.

"We're going to see \$25,000, \$30,000, \$40,000 unless it's changed legislatively," Reitmann said. "It's coming back next year."

That's no surprise to Arnold Rosenthal, an Estero resident who's pushed commissioners to implement new fees and maximize existing ones. He harkens back to a 1997 delegation hearing in which home builders listed their primary goal as eliminating all impact fees.

"This court action was just a bit of that," he said. "The legislative effort this year was a big part, and it ought to scare people."

Rosenthal argues that every dime commissioners don't get from new development must come from existing taxpayers. Impact fees, he says, are simply a way for growth to pay its own way.

The attorneys in the suit could not be reached for comment Wednesday, but Reitmann said he

thinks the suit is over.

"As far as I'm concerned it's done," he said. "I don't think there's any recourse. It's rampant runaway impact fees."

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