



Hamilton Township's impact fees again challenged

By Elaine Trumpey • etrumpey@enquirer.com • September 30, 2010

MAINEVILLE - Another challenge to Hamilton Township's controversial collection of impact fees on new construction has landed in court.

This time, nearby Maineville and a local developer are suing township trustees. Attorneys for the developer, Salt Run LLC, and the Village of Maineville filed a lawsuit in Warren County Common Pleas Court.

The developer seeks to prevent the township from collecting fees on about 20 parcels of land that now sit inside Maineville's village limits.

The properties are part of a larger area stretching east and west of Zoar Road that was brought into Maineville when Warren County commissioners approved an annexation request, known as Coors Farm Phase II, in early 2009.

Even though the annexation seemed to clear the way for local home builders to build in the newly incorporated areas, thereby avoiding paying township impact fees, the township has placed liens on the properties in the Wellington Estates subdivision, said Gary Boeres, assistant township administrator.

This type of lien is known as a "muck-up affidavit" in the legal community, according to Kevin Swick, an attorney for Salt Run LLC. "It mucks up the title to the properties and someone has to pay those fees at closing," he said.

In this case, the liens total about \$40,000 -

\$2,000 on each piece of vacant land, according to Warren Ritchie, Hamilton Township's law director. Impact fees on a single-family home in the township can approach \$6,000, but the developer was given credits for the infrastructure improvements he made to Zoar Road, Ritchie said.

Homebuilders are concerned about the bottom line. Someone has to eat all or some of the impact fees, whether it is the developer, the builder, or the buyer, said Swick.

"The impact fees have stifled building in the township," he said.

In the event the court rules against the township, the lawsuit asks that the township be required to pay attorney's fees and court costs and return any impact fees already collected to the developer.

For its part, Maineville is not asking for money, said Maineville's Law Director Kevin McDonough.

The village is a party to the lawsuit because the question of impact fees can adversely affect development in the village, he said.

"We want the court to declare one way or the other whether the township can do this," he said.

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The fact that Maineville didn't discuss the issue with township officials before bringing the lawsuit was a surprise, said Ritchie. "Usually neighbors sit down and discuss an issue before bringing a lawsuit," he said.

Hamilton Township is waiting to hear whether the Ohio Supreme Court will consider an earlier case brought by the Home Builders Association of Greater Cincinnati that questions whether a limited home rule township has a legal right to collect impact fees at all.

Earlier decisions by two lower courts ruled in favor of the township, but the nearly \$2 million collected so far is sitting in an escrow account until a final decision is made in the three-year long battle.

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