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Homebuilders to appeal fee ruling

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Suburban Dorchester County families will continue to wait for relief from crowded schools while a lawsuit over a creative way to help pay for new buildings wends its way through the courts.

A circuit judge last week dismissed a lawsuit brought by two homebuilder groups that questioned whether Dorchester District 2 charging a \$2,500 impact fee on new homes built in the district was constitutional. But a representative from one of those groups said Thursday that the associations plan to appeal the decision.

"We believe the local legislation enacting this is incorrect, a violation of state law, and possibly unconstitutional," Phillip Ford, executive vice president of the Charleston Trident Home Builders Association, said.

Charleston Trident Home Builders and the Home Builders Association of South Carolina filed the lawsuit in 2009, arguing the special legislation passed to create the fee wasn't constitutional because it bypassed general legislation that already existed governing impact fees. That legislation says that counties and municipalities can't assess impact fees for schools, but doesn't address whether individual school districts can. The associations argued that taxes such as the fee should be approved statewide only.

The district desperately needs new schools and has exhausted all other methods to pay for them, Dorchester District 2 superintendent Joe Pye said. "The schools are heavily under-funded and we're in a high-growth area," he said.

Pye said he's not surprised the homebuilder groups appealed the decision. "They let it be known Day 1 they would fight it."

He doesn't like being in conflict with anyone in the community, he said. But he'll continue to fight in the courts for the money from the impact fee. "It's a great source of revenue we can't turn our back on."

So far, the district has spent more than \$23,000 fighting the matter in court.

Impact fees for any type of new construction often are controversial. In neighboring Berkeley County, the school district must pay an impact fee to the county for new school construction. State legislators are considering a bill that would exempt new school construction from such fees. But if the bill doesn't pass, the Berkeley County School District would have to pay an impact fee for construction of the new Cane Bay Middle School.

In February, the Berkeley school board agreed to pay the county \$227,650 in impact fees to get a permit to start building the school. But the fees will be paid under protest, in hopes of getting a refund if the state Legislature passes a law exempting schools.

Dorchester District 2 has collected nearly \$2 million since the legislation was passed, Pye said. But district leaders have been unwilling to spend the money until they are certain of the outcome of a lawsuit attempting to reverse their ability to collect the fee.

Homebuilder groups argue it's unfair to dump a disproportionate share of the cost of new schools onto people who ultimately purchase new homes.

But Sen. Mike Rose, R-Summerville, who filed the legislation, said the fee places some of the burden of the cost of building new schools on people new to the district, a move that's fair because newcomers are causing the need for new schools.

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