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Ohio Supreme Court to hear impact fee case

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HAMILTON TWP. - The Ohio Supreme Court has agreed to hear oral arguments in a case that could decide the future of impact fees collected by townships.

The state's highest court will make the final determination of whether a home-rule township in Ohio - in this case Hamilton Township in Warren County - has the legal right to collect impact fees on new construction.

Two lower courts have already ruled in the township's favor - Warren County Common Pleas Judge James Flannery in 2009 and the 12th District Court of Appeals in 2010.

The contentious issue wound up in the courts soon after Hamilton Township enacted impact fees on new construction in May 2007. The fees were phased in at first, but now add up to about \$6,000 for each single-family house permit issued.

Within months, the Home Builders Association of Greater Cincinnati and four area homebuilders filed suit to challenge the township's right to collect the fees.

Attorneys for the township have argued the money is a "fee" that will only be used to pay for roads and parks or police and fire protection in the suburban township, which was one of the fastest-growing in Ohio during the last decade.

The homebuilders group claims the assessment is actually a "tax" and, since townships in Ohio are not allowed to collect taxes, the practice is illegal.

"It is a tax - no trying to disguise it," said Joseph Trauth Jr., an attorney for the home builders.

The case will probably come before justices by early fall after attorneys on both sides file written briefs, said Will Weisenfelder Jr., a township attorney.

If the court accepts the township's definition of fee, not tax, the case could set a precedent for other home-rule townships in Ohio, and have nationwide implications as well.

The Ohio Township Association is expected to file a friend-of-the-court brief to support the township's position. On the other side, the National Association of Homebuilders is expected to file a similar-type brief to support the homebuilders' position.

Although the township continues to collect (but not spend) the fee, only a few housing permits have been issued in the last few months, said Jackie Terwilliger, the township's fiscal officer. The escrow account now totals a little over \$2 million, she said.