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Ruling orders Osceola to slash impact fees

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By Noelle C. Haner

Orlando Business Journal

Updated: 8:00 p.m. ET Oct. 23, 2005

KISSIMMEE -- A recent court ruling may cost Osceola County a pretty penny in school impact fees.

Nearly 18 months after the county voted to increase its single-family school impact fee from \$2,828 to \$9,708, Osceola County Circuit Court Judge James Stroker has cut the fee to \$7,608.

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As a result, the county may have to give back at least a third of the additional \$44 million -- or roughly \$15 million -- in impact fees it has been collecting and placing in an escrow account since May 2004.

The cut was part of Stroker's most recent ruling in the Florida Home Builders Association and Home Builders Association of Metro Orlando's lawsuit against Osceola County, challenging last year's school impact fee increase and the methodology -- "the global formula" -- behind it.

And while the ruling does not throw out the methodology completely, it does require Osceola County officials to credit home builders for other sources of revenue they generate for the county that are used to enhance school capacity, such as sales and ad valorem taxes.

"It's a mixed bag," says Doug Buck, director of government affairs for FHBA. "But, at least they have to recognize the fact that new homes are paying something for capacity now."

A guiding principle

At the center of this legal battle is local governments' growing imposition of impact fees on new home construction to bolster their dwindling infrastructure budgets, especially when it comes to schools.

In the last year, Orange, Lake and Polk counties all have increased their school impact fees. While Orange and Lake counties more than doubled their fees, Polk's shot up 435 percent from \$1,607 to \$8,596.

The reason: County officials have turned to a new method for creating impact fees, dubbed the global formula.

Although there are no laws governing impact fees, decisions in two Utah court cases traditionally have been used for setting impact fee standards.

Known as the Banberry-Lafferty principle, it states that local governments must consider a number of factors when creating an impact fee, including cost of existing facilities and credits developers are given for contributing to the maintenance of existing facilities and for capital improvements that developers are required to make on their own.

Most importantly, the guideline also says new development cannot impose a financial burden on a community, but it cannot be required to enrich a community either. Local governments also must look at other sources of revenue, such as taxes, before charging an impact fee.

The global approach factors in additional elements, such as major maintenance projects throughout the life of a school, but ignores developer credits.

As a result, the local counties that have used the global formula have increased school impact fees, on average, by more than 219 percent.

Legal wrangling, part deux

According to Stroker's ruling, the global approach falls short with its disregard for developer credits.

Not only does the methodology require new development to pay for its full impact, but in Osceola County's case, it also would have forced home builders to pay for existing student stations and maintenance for the next five years through debt payments for certificates of participation, a funding mechanism commonly used by school districts throughout the state.

"The county wanted to spend all of its money on repairs and maintenance for the first five years -- but no new capacity -- even though home builders were paying for the new capacity," explains Linda Shelley, a Tallahassee attorney representing FHBA.

In the end, Stroker found the county's impact fee was overstated by some \$2,100 per housing unit, and he ordered a credit be applied and the impact fee reduced.

Nov. 17 hearing date

Still, it appears the legal debate over the global approach may not be over quite yet.

Stroker has set a hearing for Nov. 17 in the Osceola County case to provide clarification on how much of a credit should be given for all three types of homes -- single-family, multifamily and mobile homes.

Until that is settled, says Rick Collins, chief financial officer for the School District of Osceola County, the county and district will continue to escrow all school impact fees above the former rate of \$2,828.

"We're not sure what the ruling means," he says. "There are several questions we still have."


Then there is Polk County, where home builders may be mounting their own lawsuit in response to the county's recent school impact fee increase because it allows those fees to help fund the implementation and addition of student stations resulting from the class size amendment that was passed by voters in November 2002.

"The argument is that it is not the school districts' responsibility to pay for class size, so who pays for

it?" asks Buck. "Class size doesn't affect home builders' impact fees either. No suit has been filed yet, but it is being hotly discussed."

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