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School impact fee OK, for now

By LINDA TRIMBLE, Education Writer 

DAYTONA BEACH -- A two-year-old lawsuit challenging Volusia County's school impact fee will live on to be decided another day while another challenge to the fee from a DeLand adults-only community is argued Thursday before the County Council.

Circuit Judge Terence R. Perkins Tuesday denied a motion from the Volusia Building Industry Association for a summary judgment that would have invalidated the \$6,066 impact fee charged against each residential unit built in the county to help pay for schools serving new development.

Known previously as the Volusia Home Builders Association, the group sued the county in 2008 claiming the impact fee formula was improperly applied in a 2005 revision of the ordinance that established it at the request of the Volusia County School Board.

At a hearing last month, association attorney C. Allen Watts argued the school district has enough money from other sources to pay for the schools it needs in light of an enrollment decline of more than 3,300 students in the past three years.

Watts also said the class-size amendment approved by voters in 2002 makes it the responsibility of the state -- not individual school districts -- to pay for schools to house the smaller classes it mandates.

Perkins ruled extra classrooms needed because of the amendment are "separate and distinct from the need for new educational facilities caused exclusively by new development and growth in the district."

"An impact fee doesn't conflict with the class-size amendment, it compliments it," he ruled.

Perkins also said the association's contention recent enrollment declines offset the need for an impact fee "is largely irrelevant" and factual issues beyond the scope of a summary judgment motion will require more evidence and testimony to reconcile.

Representatives of both sides weren't surprised by Perkins' ruling.

"It's what I expected," said Alex Ford, the School Board's attorney in the case. "We agree with the judge that this subject requires more time and attention and must be heard in court during a full trial," association president Jeff Olson said in a statement.

In the other pending challenge to the school impact fee, the builder and owner of undeveloped lots in the adults-only Victoria Gardens development in DeLand is seeking a refund of \$388,220 of previously paid impact fees and exemption from paying future fees.

The attorney for Shea Victoria Gardens LLC argues the impact fees are unconstitutional under a 2000 Florida Supreme Court decision that the developer of the Aberdeen manufactured home park in Ormond Beach was exempt from the fee because no one younger than 55 is allowed to live there.

County staff denied the refund request last month on grounds the exemption isn't allowed under the ordinance because it wasn't requested until after building permits were pulled and the development's age restrictions fall five years short of the required 30-year irrevocable term.

County and school officials also point to the development order the original owner of Victoria Park negotiated with the city of DeLand, which requires payment of school impact fees on the entire development, including the age-restricted Victoria Gardens section.

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