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School impact-fee suit settled

Schools and builders agree to a ruling that returns part of the money tacked on to new-home costs.

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KISSIMMEE -- More than \$35 million in school-construction funds that had been tied up in escrow is being released now that a home-builders lawsuit over higher school impact fees has been resolved.

Builders are claiming victory in the case because a judge gave them credit for another fee they pay. That means they had to pay \$10 million less than Osceola County officials wanted.

Lawyers say only minor details remain to be worked out in the builders' lawsuit that challenged Osceola's 243 percent increase in the fee levied on new-home construction. The money is intended to build schools that are needed because of growth.

At stake was \$45 million collected since May 1, 2004, which was the difference between the old fee and a higher figure approved by the County Commission.

That money was squirreled away in an escrow account while the county and the Home Builders Association of Metro Orlando argued over the formula used to create the impact fee, the highest in the state at the time it was approved.

Circuit Judge R. James Stroker made his final ruling in December that gave a credit for revenue received from certificates of participation, which are issued by the School Board but do not require taxpayer approval.

An earlier ruling in September had upheld the county's basic methodology used to calculate the impact fee. Both sides had 30 days to appeal Stroker's December decision, and both let the Jan. 12 deadline to do so pass.

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"We all decided not to pursue it further, so the final judgment is final," said William Hyde, a Tallahassee-based attorney for the home builders, which brought the suit against the county.

"We would have liked the credit to have been greater, but we were pleased with the overall result."

More than two years ago, the county approved a much higher impact fee for schools, raising it from \$2,828 to \$9,708 for each new single-family home.

The home-builders group objected and filed a lawsuit, which argued that the methodology used to calculate the amount was unjustified.

The judge ruled for the county in September, then lawyers for the builders were granted a rehearing, where they argued that the extra source of revenue was unfairly included in the formula.

Stroker agreed and said the extra money should give builders a \$2,100 credit. The new fee stands at \$7,608.

Home buyers who purchased a new home within a certain time frame will receive a partial refund on the impact fee that was passed along to them, County Commissioner Atlee Mercer said.

Homeowners will be informed of the process once the procedure is in place, he said.

"Whatever is left over will go to the school district," Mercer said.

"We're not going to be able to build as many schoolrooms as had we had all that money."

County officials created the escrow account shortly after the suit was filed. They collected \$45.5 million from the higher fee.

After a portion is refunded, the school district expects to have about \$35.5 million to spend on building new schools.

Ironically, the data used to calculate the impact fee has become outdated, and the School Board now plans to re-evaluate the numbers in a new impact-fee study, officials said last week.

"The impact fee was set up two years ago, and in that time, school construction costs have risen 20 to 25 percent," Mercer said.

Staff from the Osceola County School District have entered negotiations with a consultant, who if approved by the School Board will review current data and projected revenue for a new study.

Rick Collins, assistant superintendent for business services, said approval from the board could come as quickly as next month.

"The new study will be based on the judge's ruling," he said.

"Every revenue source in the data will be evaluated and will reflect the current conditions."

New information will include the higher construction costs, student enrollment and the current tax base, which has expanded faster than projected, Collins said.

The county's plan for new schools has included building 20 elementary schools, nine middle schools and eight high schools in the next 10 years, school officials have said. An elementary school costs nearly \$19 million to build, from purchasing the land to filling the school with furniture and equipment.

A long-range planning committee has begun meeting to determine the district's priorities, Collins said.

"[Members will decide] which of those projects are going to go first," he said.

"They'll come up with the best mix that makes the most sense."

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