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School-impact-fee ruling put off

By LINDA TRIMBLE, Education Writer 

DELAND -- After nearly two years of swapping written arguments, lawyers for three parties to a lawsuit challenging the validity of the Volusia County school impact fee got their first chance Monday to plead their cases to a judge.

But they'll have to wait a little longer to find out how Circuit Judge Terence R. Perkins will rule on a motion from the Volusia Building Industry Association, formerly known as the Volusia Home Builders Association, for a summary judgment in the lawsuit that group filed in 2008.

Perkins gave lawyers representing the builders, Volusia County and the School Board 20 days to submit their recommendations for an order ruling on the motion.

At issue is whether the \$6,066 impact fee on each new residential unit built in Volusia County -- adopted by the County Council in 2005 at the request of the School Board -- is valid and whether it's even needed now in light of declining enrollment and a state constitutional amendment on class sizes.

The school district enrolled 62,416 students in the school year that ends today -- a 3,351 drop since 2007 -- and expects to lose another 600 students in the next school year.

Builders' attorney C. Allen Watts argued Monday the impact fee formula was misapplied in the 2005 ordinance and grossly underestimated the legal credits for other revenue available to the school district to expand school capacity.

County Attorney Dan Eckert countered that Watts was claiming his clients should get credit against the size of the impact fee for property and sales taxes paid by other parties. He and School Board attorney Alex Ford said case law limits the credits solely to tax revenue generated by new growth.

They also disagreed with Watts on whether the enrollment decline after 25 years of steady growth has any bearing on the validity of the impact fee. "We're not looking at this point in time," Ford said. "We're looking at the broad history" of a new house and how many public school students will live there over the course of its useful life.

Watts also argued that the class-size reduction amendment to the Florida constitution approved by voters in 2002 clearly makes it the responsibility of the state -- not individual school districts -- to pay for the smaller classes mandated by that measure.

"Our contention is the state constitution now sets the level of service and says the state will fund it," Watts said, telling Perkins that would override a school district's right to impose an impact fee.

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