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Sides make their case in school-fee debate

By Kevin P. Connolly
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Volusia school officials defended the county's new \$5,284-per-house impact fee against a challenge by home builders during a hearing Wednesday in Tallahassee.

The Volusia Home Builders Association in April filed a legal objection in a relatively obscure venue -- the Florida Division of Administrative Hearings -- to oppose the fee, which more than quadrupled the one-time charges levied on new homes to help pay for schools.

School officials dispute the association's claims about procedural mistakes and other perceived problems with the evolution of the fee, which was approved by the County Council in February at the request of the Volusia County School Board.

Florida Administrative Law Judge D.W. Davis heard arguments and testimony from both sides Wednesday but didn't issue a decision. Davis' ruling is expected in one or two months.

However, school officials are worried that regardless of how the judge rules, the home builders will keep fighting and the dispute will go on for years.

"I think it went well," Sue Darden, executive director of the Volusia Home Builders Association, said after the hearing. Darden, Masterpiece Homes President Robert Fitzsimmons and University of Central Florida economist Mark Soskin testified for the home builders.

Darden said she hopes the challenge will force school officials to "justify the numbers" used to calculate the fee, which jumped from \$1,139 to \$5,284 per home early last month based on a consultant's recommendation.

She acknowledged the need to "pay something, but it needs to be reasonable." Her organization has previously voiced support for a \$2,600-per-home fee.

William C. Kelly, the school district's chief financial officer, described the home builders' arguments about procedural mistakes as "convoluted."

In court filings, the legal counsel for the home builders, DeLand attorney Allen Watts, argued that the School Board's support of an impact-fee increase constituted a "rule" under state law, and therefore should have undergone a more extensive public-notification process.

"We think that, in fact, by all accounts, that's a stretch argument," said Kelly, who testified Wednesday. School Board attorney Richard Kizma and impact-fee consultant Bob Wallace also supported the School Board, which is being represented in this case by prominent DeLand attorney Alex Ford.

It's the second legal challenge to an impact-fee hike in Central Florida.

The Home Builders Association of Metro Orlando sued Osceola last year after county commissioners approved a school-impact fee that more than tripled the charge from \$2,828 to \$9,708 -- the highest in the state. Closing arguments were made in that non-jury trial last week, and a ruling is expected next month.

Officials in both counties have agreed not to spend the additional revenue -- the difference between the old and new fees -- until the litigation is over.

Kelly said the Volusia School Board is still awaiting its first payment from the county under the new fee structure. Originally, the new fee was projected to raise \$25 million annually. But Kelly said that amount has been adjusted downward for the first year or so because of a rush of pre-payments to avoid the higher rate.

The County Council approved the new fee in February with an effective date of June 6. Typically, the county takes in about \$400,000 in school-impact fees. In June, that figure skyrocketed to \$3.6 million.

"We did most of that business in the first three days" of June, said Ron Yates, manager of the county's permit center. Those were the final three business days before the fee took effect.

School Board Chairwoman Candace Lankford, who didn't attend the hearing, said a consultant has already justified the increase.

Home builders "know we need the money. They know that," she said. "However, they're unhappy with the source."

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