

Ohio Supreme Court listens to local impact fee case

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11:59 AM Wednesday, June 8, 2011

COLUMBUS — Justices on the Ohio Supreme Court peppered attorneys Wednesday with questions about Hamilton Twp.'s impact fees.

The state's highest court will decide if the fees are legal or an improper tax.

The fastest growing township in Warren County instituted impact fees in May 2007 to deal with the large growth it was receiving in new homes.. The Home Builders Association of Greater Cincinnati and a bevy of builders sued within three months.

Common Pleas Judge James Flannery and the 12th District Court of Appeals found the fees were permissible. Since no other township in the state has tested the right to impose the fees, the high court accepted the case.

Charles Miller, who represents the home builders, told the justices the impact fees are disguised taxes because they are used to benefit the entire township. Will Weisenfelder, representing the township, said since the fees are segregated into four accounts, for police, fire, parks and roads, and can only be used for capital projects or purchases, they are not taxes.

Justice Paul Pfeifer bantered with Weisenfelder, saying townships don't necessarily need to build new roads. One the other hand, he said new schools are a necessity. He asked if schools should to be allowed to charge impact fees.

Weisenfelder replied that schools aren't allowed to charge impact fees, but said it demonstrates why the township's fees are justified.

"It demonstrates the need for a mechanism to deal with growth," he started to say when Pfeifer cut him off, saying, "That's what taxes are for."

Weisenfelder suggested taxes are not a viable vehicle to deal with growth and Pfeifer countered with, "When you say they don't work, do you mean universal taxes don't work or you can't get the public to vote for them?"

Chief Justice Maureen O'Connor cut off the debate and brought Weisenfelder back to the issue of the "separate respository" for the fees. The township has held the fees in a separate escrow account since the resolution was enacted. To-date the township has collected approximately \$2.3 million. O'Connor, pointing to a clause in the resolution, asked if the unused fees have to be returned because they haven't been spent. Weisenfelder said no.

Joe Trauth, an attorney for the builders, told the justices the fees are a double tax and used the

example of a long time resident, who has paid taxes for years, who wants to build his daughter a house on his land. He would have to pay the \$6,100 fee. Trauth said that was unfair, but Justice Evelyn Lundberg Stratton countered.

“That’s a very narrow sympathetic argument,” Lundberg Stratton said. “What about the developer that comes in then on a plot of land and builds 200 homes? How does the township serves those new 200 people?”

The justices took the case under advisement and their decision could take months.

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