

First-ever impact fee challenge in Ohio continues

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The protracted litigation over impact fees in Hamilton Twp. is far from over, according to attorneys for the home builders.

Last month the township asked Judge James Flannery to strike the home builder's application for attorneys fees and for a revised court schedule which would delay the Aug. 13 hearing to decide the amount of fees the township must pay. The township maintained a 40 percent contingency award, or just over \$1 million, is improper.

Flannery agreed last week that the fees likely should not be based on the contingency percentage the home builders approved for their attorneys, but denied the motion to strike and won't delay the hearing.

"The defendants have known ever since the decision by the Ohio Supreme Court herein that an award of attorneys fees would be likely....," Flannery wrote. "The court finds that there is no way that they can now claim surprise that the court would ultimately require the defendants to pay appropriate and necessary attorney fees."

The Ohio Supreme Court decided impact fees that Hamilton Twp. was charging home builders are impermissible taxes last May. The case was sent back to Flannery, who ruled in December the township must return \$2.1 million to the home builders who sued them and \$403,177 to individuals who did not sue but paid the taxes.

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

Chip Miller, one of the home builder's attorneys, said they will present a figure to Flannery and the township will offer their "low ball number" and it will be up to Flannery to pick the correct calculation.

"The calculation can equal the contingency fee, it can be more," he said. "It's a different calculation that can reach the same result."

Attorneys have said the billable hours in the case so far are \$607,173. The township's trial attorney could not be reached for comment. Township Law Director Warren Ritchie said he believes discovery is underway to determine the time spent on the six-year long litigation.

Miller said no matter what amount is chosen, he expects the case to continue.

"The township's insurance defense counsel have indicated to us that they are very eager to exercise their right to appeal from whatever award he gives us," Miller said. "They want this to live on."