

Impact fee payers make case in court

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LEBANON —

Several Warren County impact fee payers came to court Wednesday to protest having to chip in 40 percent of their refund for attorneys fees.

Judge James Flannery, who has presided over the six-year-old case that went to the Ohio Supreme Court, has taken most of the issues in the Hamilton Twp. impact fee case under advisement. The judge heard arguments over who should pay the estimated \$1 million in attorneys fees — if the 40 percent level is found reasonable — accumulated by the defendant home builders. Flannery will also rule on whether the \$403,177 the township collected from 58 non-parties should be subject to a 40 percent attorney fee.

The township imposed the impact fees in 2007 and a bevy of builders and the Home Builders Association of Greater Cincinnati sued three months after the resolution's inception. Flannery and the 12th District Court of Appeals ruled the fees were fine. The high court struck the fees down as impermissible taxes.

Ray Warrick, who paid his \$6,153 in 2010, said he doesn't feel any of his money should go toward attorneys fees.

"I don't feel that I'm a party to a dispute," he said. "As much as a victim of an unlawful act."

Flannery quibbled a bit with Warrick's comparing the impact fees to someone stealing his television set, saying the township didn't purposefully pass a law they knew wouldn't pass muster. He also asked Warrick, as he did several people who testified, if they would be getting a refund at all, were it not for the hard work the attorneys put into the case.

"There is simply no way that you or any of these other named members ... could afford individually to hire lawyers to do this," he said. "It would have been totally economically unproductive. You would have had to spend hundreds of thousands of dollars in attorneys fees to get back your \$6,000. You would never have done that."

Belinda Stern told the judge she believes the attorneys should be paid by the non-party people, but that 40 percent of her \$4,060 refund was too high. Mark Schnicke agreed and said he did his own calculations and feels 23 percent of his \$18,459 refund would be fair.

The home builders also want the township on the hook for attorneys fees, and they argued federal law provides for that payment. The township says since the federal claims that were part of case were never decided they aren't liable for the fees.

Flannery said he will issue a ruling on his decision regarding whether the township is responsible for the fees and whether the non-party people are responsible for a 40 percent fee. If he decides the township is on the hook, then another hearing will have to be held to decide the amount of fees.

An expert on attorneys fees David Kamp testified the 40 percent amount was fair, because after the trial court phase they were working on a contingency rather than fee basis.