

Local impact fee fight goes to the Ohio Supreme Court

By [Denise G. Callahan](#), Staff Writer

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HAMILTON TWP. — A local fight over the legality of impact fees will be heard by the Ohio Supreme Court.

The state's highest court agreed to listen to arguments if impact fees that Hamilton Twp. imposed on new homes built in southern Warren County is legal or a form of taxation.

A group of home builders and the Home Builders Association of Greater Cincinnati filed an appeal with the high court Sept. 2. The 12th District Court of Appeals based in Middletown sided with Warren County Common Pleas Judge James Flannery in July, saying the fees are permissible.

The home builders filed suit five months after the township instituted the fee in May 2007. They argue impact fees are really a tax, and townships have limited taxation authority.

Hamilton Twp., one of the fastest growing townships in the state for many years, is the first township in Ohio to impose the fees.

"This is a very important issue, I think there is a lot interest in it from home builders associations both state and local, chambers of commerce," said Joe Trauth, who represents the HBA. "Here you've got probably the worst real estate market since the Great Depression and you've got a township attempting to double tax people who want to invest in a new home. It just doesn't seem right."

However, two courts now have ruled the fees are not taxes. Flannery ruled last fall that Hamilton Twp. may charge the impact fees to help pay for capital expenditures for police, fire safety, parks and roads.

Will Weisenfelder, who represents the township, said he wasn't surprised the court accepted jurisdiction either.

"It could have gone either way," Weisenfelder said. "I'm not totally surprised, it's probably a case they want to hear."

The National Association of Home Builders and the 1851 Center for Constitutional Law filed amicus or "friend of the court" memorandums on the jurisdiction question for the home builders. Weisenfelder said the Ohio Township Association will likely file an amicus brief supporting the township with the high court.

Trauth said oral arguments in the case probably won't be heard until next fall.

Meanwhile, the township continues to escrow the fees it has been collecting for almost three years. As of October, it had collected about \$2 million.

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