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Judge to rule on \$1M in attorneys fees

By Denise G. Callahan

LEBANON — The legal wrangling in a Warren County impact fee case continues as the two sides argue over who should pay an estimated \$1 million in attorney's 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 Judge James 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.

Flannery now has to decide whether the home builder's attorneys are entitled to a 40 percent attorney fee award and who is responsible for that bill. The billable hours in the protracted litigation totalled \$607,173 but a 40 percent award — which the builder's attorneys have requested — totals just over \$1 million. The home builders say the township needs to pay the fees because they won the case, but the township disagrees.

The fastest 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.

Flannery and the 12th District Court of Appeals found the fees were permissible. Because no other township in the state had tested the right to impose the fees, the high court accepted the case.

The township argued because 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.

The township is arguing that because the federal constitutional claims in the case were never decided, then they are not liable for the fees.

"Defendants strongly maintain that the constitutional claims are without merit and that plaintiffs would not prevail if the court were to rule upon those claims," a township memorandum to Flannery reads. "Fees should not be awarded unless there is some indication that Hamilton Twp. has violated the constitution so as to justify the congressionally created exception to the American Rule."

One of the attorneys for the home builders, Charles Miller said the township's reasoning is faulty.

"They ask the court to create "new law" and find that the claims must be identical — challenge the law in the same way — before fees are awarded. This isn't the law, and we expect the court will not create new law," he said. "Under existing law, claims are reasonably related so long as they seek the same relief. All of our claims sought to void the impact fee. The relief sought was the same."

Law Director Warren Ritchie said he can't comment on whether or not the township's insurance company would cover the attorneys fees if Flannery awards the fees.

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