

## City's impact fees low, but are they legal?

By Lindsay Whitehurst The Daily Times  
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FARMINGTON — The city of Farmington has ignored a state law charging developers impact fees, a home builder pointed out this month.

Officials admitted they don't follow the law, but said the city's impact fees are low compared to other communities. They pledged to begin the process of complying — and raising the fee.

"The city is not in compliance, so it doesn't have the authority to impose a development fee," said Reagyn Germer, attorney for Sakura Engineering, which is representing a 34-lot development located on Wildflower Mesa Drive.

Among other requirements, the law requires the city to appoint a committee and hold public hearings to set the fee, then issue reports on how it's spent.

"There's no question ... we did not bring it into place," city attorney Jay Burnham said.

The city charges developers about \$193 per lot, based on the cost of providing 3.75 acres of park space per 1,000 residents, a formula developed when the fees were instituted in 1977 during a residential boom, Community Development Director Michael Sullivan said. The charges were supposed to be reassessed every year, but the City Council stopped that process less than five years later to encourage building during a real estate bust cycle. The fees have remained the same ever since.

The charge falls under the category of impact fees, which cities use to offset the impact of new homes on a city's water, street, sewer, parks and other infrastructure.

The city of Roswell, for example, has development fees that are used for water, sewer and park systems, Planning Director Zach Montgomery said. They charge about \$1,000 to \$1,400 per lot for a single family home.

"(Farmington's fee) is very inexpensive," he said.

But the fee still has been imposed incorrectly, city councilor Jason Sandel said.

"So if the fee was \$1 it would still be illegal?" he asked Germer during the city council meeting.

Since 1998, the city has collected more than \$200,000 in impact fees, a drop in the bucket compared to the city's overall parks budget for that nearly 10-year period.

The city has more than surpassed its goal in regard to park space; in 2002, there were 1,770 acres of park land, about .04 acres for each of the 41,000 citizens. The 3.75 acre-per-1,000-residents goal would have provided .003 acres per person.

"This is just someone trying to make a point and put the city in a bad light," Mayor Bill Standley said during the meeting. "There's also a little vengeance involved."

The project's engineer, Paul Martin, is a former city attorney. Germer, attorney for the project's developers, declined to comment beyond those made during the meeting.

But in the 13 years since the state of New Mexico passed the Development Fees Act, the city has never brought its policies in line with the state requirements. The city could not provide an accounting of how the impact fees have been spent by press time.

So why not get into compliance?

"That's the \$64,000 question," Sullivan said. Part of the reason, he said, is that if the city was challenged in court, the maximum penalty would be twice what it charges now for impact fees — the less-than-worrisome amount of \$400 a lot.

The other reason, Sullivan said, is "the development community has chosen to let sleeping dogs lie," and hasn't made the fee an issue.

Now that it has been brought to light, however, he said the city will begin the process of revision and likely bring the issue back in front of the council in about four months.

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