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Sun Valley to refund in-lieu fees

Recent court decision sets city housing plan back

by *TREVOR SCHUBERT*

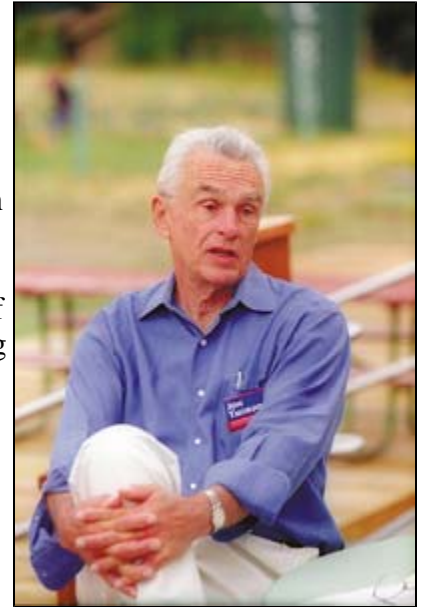
The city of Sun Valley agreed on Thursday, July 19, it would refund the \$363,348 of in-lieu fees collected under the now-defunct Workforce Housing Linkage Fee since Ordinance 364 was passed in 2005.

"I am sorely disappointed that this tool, this single tool for the establishment of workforce housing, has been removed from our armament," said Sun Valley Mayor Jon Thorson.

Thorson went on to say that on a personal level he would want to appeal the decision of 5th District Judge Robert Elgee, who ruled earlier this summer the city's in-lieu housing fee amounted to an unauthorized tax.

"However, there are many other tools out there," Thorson said. "To spend taxpayer money to preserve a tool that my gut tells me will not survive—I will not do."

The ordinance attempted to mitigate the impact of new development in the city by requiring owners building new residential homes to develop or ensure the development of 20 percent of the of the employee housing required for construction of the new home. If the homeowner did not provide housing, an in-lieu fee was collected and placed in a city account for future workforce housing needs.



Jon Thorson

Phil and Lynn Schaefer of Tacoma, Wash., brought the case over an \$11,989 in-lieu fee collected when they applied for a building permit in the Lane Ranch subdivision.

The issue before the City Council last Thursday was over whether or not to appeal the decision, a move that would have sent the case to the Idaho Supreme Court and kept the status quo in place while a final decision was rendered. Although the city still had time under the 42-day appeal period, the council approved a motion effectively waving its right to appeal. City Attorney Rand Peebles estimated an appeal would have cost the city \$40,000.

Councilman Nils Ribi made a plea to the local citizenry in attendance and to his fellow council members to pursue an appeal, a plea that ultimately fell on deaf ears.

"This isn't a political issue," Ribi said. "Just to throw the baby out with the bath water because of one judge's decision—it's critical to the future of our community. The small amount we will spend on this is small when compared to what we will lose."

Sun Valley Co. General Manager Wally Huffman reminded the council that this very issue was debated in 2005 before the ordinance was passed.

"This isn't a judge's crazy decision," Huffman said. "I remember going over and over discussing that there's a good chance this would be illegal. This is a loser in this state, and you ought to be looking at other options."



Peebles agreed that impact fees are allowed in many Western states, but those states "have it explicitly allowed."

"The Supreme Court in Idaho gives very little in terms of power and authority to individual cities," he said. "I would dearly love to appeal this, but I am not going to advocate what I would like to do if it goes against the collective good of this city."

Thorson posed the question to council members, "Is there harm to the city to wait?" through the remainder of the 42-day appeal period. There is a similar case in McCall, Idaho, where a decision could support Sun Valley's case for an appeal.

Councilman Dave Chase asked for clarification.

"By harm to the city, do you mean to the collective citizenry or to the city administration? Because if you mean to the citizens and if I paid \$11,000, that hurts to not have that in my pocket," he said.

Rebekah Helzel, representing Advocates for Real Community Housing, encouraged the city to appeal.

"We don't have that many tools (to combat workforce housing)," she said.

Helzel added that Idaho cities do, in many ways, have their hands tied when it comes to workforce housing.

"Workforce housing is as much a part of a community's infrastructure as streets are," Helzel said. "There's a resident transfer tax we don't have. Washington and Colorado do. Bonds are not possible. Impact fees are illegal ... this is a bi-partisan issue, and all of us need to educate the Legislature in Idaho. The state doesn't understand its changing needs."

The council agreed lobbying the Legislature is an option. At this time, however, and for this particular case, the city conceded, instructing city staff to begin the process of refunding all in-lieu fees collected.

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