

 [print this page](#)

# Plaintiffs ask SV for additional \$56,000

## Couple sued city over workforce housing law

by *TREVOR SCHUBERT*

On the heels of a recent court ruling effectively ending the city of Sun Valley's residential workforce housing linkage fee ordinance, plaintiffs Phil and Lynn Schaefer, via their attorney Christopher Meyer, are seeking an additional \$56,000 from the city.

"The city will file an objection to this request," said Rand Peebles, attorney for the city of Sun Valley.

The request includes \$53,700 in attorney fees, \$2,200 in discretionary costs and \$88 in "costs as a matter of right."

Under Idaho Code, "the court shall award the prevailing party reasonable attorney fees, witness fees, and reasonable expenses" if the court finds the losing party "acted without reasonable basis in fact or law." In other words, it comes down to 5th District Judge Robert Elgee's decision over whether the city ignored the established case law used to support his decision.

On July 3, Elgee ruled the city could not levy a tax without the authorization of the Idaho Legislature. The ruling ordered the city to refund the Schaefer's the \$11,989 "in-lieu" fee collected by the city as part of a design review application for a new home in the Lane Ranch subdivision.

On July 19 the city decided not to pursue an appeal and instead to refund the entirety of in-lieu fees collected under the now-defunct Ordinance 364 since it was passed in 2005. As of June, \$363,348 had been collected. Figures for July are not yet available.



The city's contention was that the money collected was an exaction—a legal collection of money under the Police Powers Clause of the Idaho Constitution—not a tax.

In Elgee's 19-page decision, it reads "the city spends a considerable amount of time arguing that the in-lieu fee is an exaction rather than an impact fee ... The city, however, cites no Idaho law supporting these propositions and this court can find none."

The decision went on to state that regardless of whether the collection is labeled an exaction or an impact fee, the collection must still satisfy the requirements of a valid exercise of police power. The decision ruled that it did not because the purpose of the collections was to raise revenue, and money collected was not incidental to enforcement of a regulation. Thus, the collection was considered a tax and the Legislature must authorize the imposition of taxes, which it did not.

There remains, however, a gray area as to whether the city acted without basis in fact or law.

The Elgee decision states, "The city claims no refund is due because the city acted 'without reckless, willful and wanton conduct as defined in 6-904C, Idaho Code.' This court cannot find that the city of Sun Valley enacted Ordinance 364 willfully or recklessly, and therefore denies any refund pursuant to this act."

Instead, the judge awarded the refund on the grounds Sun Valley was unjustly enriched by the collection of an unconstitutional tax.

Following the formal objection by the city, Judge Elgee will hear arguments on behalf of the Schaefers and the city. A date for the hearing has not been set.

[Copyright © 2007 Express Publishing Inc.](http://www.mtexpress.com/story_printer.php?ID=2005116330)

All Rights reserved. Reproduction in whole or in part in any form or medium without express written permission of Express Publishing Inc. is prohibited.

*The Idaho Mountain Express is distributed free to residents and guests throughout the Sun Valley, Idaho resort area community. [Subscribers](#) to the Idaho Mountain Express will read these stories and others in this week's issue.*