

The Morning News

Local News for Northwest Arkansas

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Impact Fee Suit Should Stay In Federal Court, Homebuilders Argue

By [Ron Wood](#)

THE MORNING NEWS

FAYETTEVILLE -- A federal court has jurisdiction to hear a challenge to Rogers' water and sewer hook-up fees, a homebuilders' association suing the city said Thursday.

The suit alleges fees for hooking up to water and sewer in Rogers were improperly used for unrelated city improvement projects.

The suit also alleges the fees were not approved by either the City Council or voters and are an illegal tax by the Rogers Water and Sewer Commission, which oversees the city-owned utility.

The Rogers City Council has since voted to approve impact fees. But the suit contends a city must pass impact fees before it can begin collecting them. Rogers, according to the suit, was collecting the fees before the ordinance was passed, just under another name.

The suit was filed on behalf of the Northwest Arkansas Homebuilders Association and Rogers resident William Fairchild.

A state court case was dismissed earlier for lack of standing by the plaintiffs, Monarch Development and Gene Elsey.

The city contends there's no jurisdiction in federal court because the suit is barred by the Tax Injunction Act. That act says federal courts can't enjoin, suspend or restrain the levy or collection of state taxes.

But, the homebuilders association said Thursday they have not alleged the fees were a tax.

"However defendant's access and hook-up fees are characterized (impact fee, service fee or tax) they have been imposed illegally and constitute an illegal exaction in violation of the U.S. Constitution and Arkansas law," according to the response.

The court also has jurisdiction over Fairchild's federal due process claims, according to the response.