

The Mercury News

MercuryNews.com

Atherton council rejects settlement of road fee lawsuit

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Posted: 03/17/2011 10:40:24 PM PDT

Updated: 03/17/2011 11:50:09 PM PDT

The Atherton City Council has rejected the proposed settlement of a lawsuit filed last August by a local developer who contends the town illegally charged \$298,000 in road impact fees.

As a result, the town could end up fighting the suit in court. "We remain confident in the legal arguments of our case," said Leah Castella, Atherton's special litigation counsel. "The settlement was always contingent on council approval."

Castella said she couldn't discuss why the council decided in closed session not to settle.

Walter McNeill, the attorney for developer Pacific Peninsula Group, said he was surprised by the council's decision, since the tentative settlement had been hammered out with the city's lawyer last month in mediation.

"Quite a bit of effort went into discussing and mediating a settlement," McNeill said. "I'm disappointed they didn't follow through."

From 2000 to 2009, Atherton charged road impact fees for construction projects on the premise that work traffic contributes to street damage. The town collected \$5.5 million in road impact fees those

nine years.

The fee's legality came into question after a state appellate court ruled in 2005 that a sewage trucking fee charged by Kern County for a similar reason violated state laws.

The Atherton City Council subsequently rescinded the road impact fee in 2009 and agreed to refund fees paid between July 2006 and September 2009.

But the council changed its

mind again later, voting last July to refund only the amount collected from an increase that went into effect in August 2007.

In its lawsuit, Menlo Park-based Pacific Peninsula Group argued for full refunds because the entire fee was illegal.

In January, a judge rejected Atherton's motion to dismiss the complaint and scheduled a trial on the suit for June 13.

McNeill declined to disclose the dollar amount his client agreed to in order to settle the case, but noted that the council's rejection means "we'll go back to litigation."

The town has asserted that Pacific Peninsula Group's claim is invalid because the state law requires that refund requests be made within 90 days of paying a fee; McNeill countered that the provision didn't apply because the money taken was not a valid fee.

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