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City, builders aim to settle affordable housing suit

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Judge set to hear arguments May 19

By Lori Weisberg
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The city of San Diego and the homebuilding industry will make their cases before a judge next month in an effort to settle a three-year-old lawsuit over affordable housing mandates on new development in the city.

Lawyers from the city and the San Diego County Building Industry Association met Friday with Superior Court Judge John Meyer in his chambers. Meyer set the hearing for May 19.

Both parties have submitted legal arguments to the court. A tentative ruling will be made May 18, with oral arguments the next day, Deputy City Attorney David Karlin said.

Although the City Council approved a settlement earlier this month that would have relieved some developers of higher housing fees, the agreement later collapsed when the council rejected additional provisions sought by the Building Industry Association.

City Attorney Michael Aguirre is trying to restart talks with the building industry in hopes of ending the litigation.

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issue is the city's inclusionary housing ordinance, which requires developers to set aside a percentage of their new housing units for low-and moderate-income households. In lieu of that, builders have the option of paying a fee.

The building industry's objections revolve around the issue of when the fee is paid. The builders contend the council's intent was to charge the fee when a development application was completed, but city officials disagree. They say the fee was to be levied when a developer pulled building permits.

The difference in time between those two steps can be significant.

Under the settlement the council approved, the fee would be calculated long before the housing project is built, meaning some developers would be able to escape fee increases that occur each year.

City housing officials say the change in when the fee is levied could cost San Diego from \$9.6 million to \$43 million in housing subsidies. The estimate is based on the roughly 18,000 housing units now in the pipeline, although developers of a large number of those units are prepared to take out building permits in the near future.

The sticking point in settling the suit is a separate agreement citing the conditions under which the building industry is willing to dismiss its lawsuit. The association wanted language that would allow it to reinstate its suit during a two-year period if the city reneged on its agreement and made significant changes to the housing ordinance.

The council rejected that provision in a closed session.

Some council members have discussed eliminating the housing fee, because it is not generating as many affordable housing units as they had hoped. Builders then would be required to build a

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percentage of their new housing for people with low or moderate incomes.

“The city has mishandled this from the beginning,” said Paul Tryon, chief executive for the San Diego County Building Industry Association. “It's been a failure to move this forward for public debate for three years.

“We remain hopeful that we can reach a settlement and conclude this case, but if we cannot, we're prepared to go to trial. The city runs the peril of the entire ordinance being ruled invalid and having to refund the monies collected.”

Aguirre said he spoke Thursday with an attorney for the industry association about the idea of setting up a dispute resolution panel for developers whose projects are awaiting final approval.

“If there's an unfairness or a hardship, then they'd be eligible for a waiver of the higher fees,” Aguirre said.

Jim Waring, who is Mayor Jerry Sanders' chief of land use and economic development, said he supported a settlement to end the litigation even though he has been told the building industry's lawsuit is weak.

“Their case might be weak, but that doesn't mean you will win,” said Waring, who helped negotiate the settlement. “What we were trying to do was get some certainty in the process. And how many battles can you fight at one time in one system?”

■ Staff writer Elizabeth Fitzsimons contributed to this report.

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