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## Patterson to pay back developer fees

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by Kendall Wright / Patterson Irrigator

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A settlement concerning a case involving \$775,000 in affordable housing fees paid by developers of a housing subdivision several years ago has been reached, the Patterson City Council announced Friday, May 7.

After months of settlement conferences with a Stanislaus County Superior Court judge, interim City Attorney Tom Hallinan announced the city must

pay \$947,500 to builder Morrison Homes Inc. and the Building Industry Association of Central California — an obligation that includes paying back all of the \$775,000 in developer fees collected, and a combined \$172,500 in interest and litigation fees.

“Even though this is a substantial payout, the city’s budget won’t be negatively affected,” said interim City Manager Bryan Whitemyer. “Originally, when we caught wind that this might end up in a legal challenge, we put the fees away in an account and didn’t touch it.”

The decision comes following a controversy that dates back to 2003, when the council and Morrison Homes entered into a developer agreement for a 214-unit housing development within Patterson Gardens.

During that time, the council was in the process of drafting an affordable housing fee for the development — with the idea that a higher fee would encourage developers to build price-controlled homes on their own.

Though Morrison Homes at first agreed to pay the new fee, the developer and the Building Industry Association took legal action when it increased from \$734 to \$20,946 per house — a fee paid under protest by multiple developers on 37 homes.

Initially, the city won the first challenge at the county level in 2007, but later lost on an appeal in 2009 when the judge ruled that the fee was trying to address insufficiencies in the housing market that existed prior to the development being built. According to California law, the judge ruled, jurisdictions like cities can only charge developer fees that will be used to address issues the project itself would create.

This means that the city could charge developer fees for providing roads to accommodate a project, for example, but it couldn’t charge a fee to build a road to an area in town unrelated to the project.

The case was later denied review by the California Supreme Court, and with the city’s legal options exhausted, a settlement was the last choice still on the table.

“I think that the intent of the council at the time was that we were going in the right direction with increasing the fee, but unfortunately, our formulas were not fine-tuned enough to implement that policy right then,” Councilwoman Annette Smith said. “Sadly, we were the guinea pigs in this situation. I’m sure this will be a message to all the other municipalities that have implemented similar policies.”

The city no longer charges an affordable housing fee to developers, but has instead implemented an inclusionary unit requirement.

This requires that all housing developments within the city must include 15 percent price-controlled homes or negotiate an in-lieu fee with the council, said Rod Simpson, the city’s community development director.

That ordinance is based on a Napa ordinance that has already held up to legal challenges, Simpson said.

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