

Remaining settlement money belongs to the builders

David Graham, Guest Columnist | Posted: Tuesday, July 5, 2011 12:15 am

We would like to clarify some misconceptions and misunderstandings about the impact fee lawsuit and the remaining funds that were not distributed to members of the class. The recent media attention given to this situation has failed to mention the most important fact that comes from the lawsuit and SWMBIA's reasoning for not returning the money to the city.

First, a little background. SWMBIA, as a representative of the class, filed a class-action lawsuit against the city in 1999 for improperly charging impact fees on new construction. SWMBIA, as representative of the class, was ultimately successful and won the suit. Although the total dollars in question were more than \$20 million, the city settled with the class for \$5 million so we could all move on. These funds were distributed to those people in the class that had paid the impact fees, and many of the builders returned them to clients. The remaining funds in question are available as some people who paid impact fees could not be located.

As mentioned previously, the class was awarded the settlement, not the builders. This distinction, which the newspaper neglected to mention, is the principal reason that the class is entitled to the remainder of the funds that were settled on by the city. The class was certified by the courts and included past, present and future impact fee payers. The key word in the certification of the class is future. The past members of the class were protected and paid from the settlement. The future fee payers' only protection is the remaining funds from the suit. The city had their day in court to dispute the class, and they chose not to do it. It's very surprising that they would choose to dispute the class and the court's decision now, 12 years after this started.

These funds should be used to make sure that future impact fees are administered fairly and at an appropriate rate, thus protecting the future rate payers of the class certified by the courts. SWMBIA does not dispute the necessity of impact fees if they are properly administered and the rate is fair. The city just approved the contract for the firm doing an updated impact fee study this year. They have gone to great lengths to include SWMBIA reps in the process, and we anticipate a reasonable outcome to the updated study.

However, governments at all levels need to be monitored to make sure their actions are fair and equitable. The remaining funds awarded to the class would ensure that this happens. These funds could potentially be used for other impact fee studies, besides those paid for by the city, or to critique, if necessary, the city's own study. If these actions were deemed necessary by the administrator, the future rate payers of the class would be protected. This outcome was the

intention of the court, and the absolute decision of the court when it awarded the class the funds from the city.

Meanwhile, the city continues to spend taxpayer dollars on legal fees to fight a court-ordered decision that was already resolved many years ago. As the Chronicle has stated, this should be an open-and-shut case. They lost the suit. They returned the over-charged fees to the class. Now they want it back? It just isn't right.

David Graham, of Belgrade, is president of the Southwest Montana Building Industry Association.