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Builders challenge towns' impact fees

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Hudson Star-Observer - 03/21/2008

A regional builders' association has filed lawsuits against a town in Pierce County and a town in St. Croix County, claiming the municipalities' impact fees are illegal. The suits ask for refunds totaling over \$600,000.

The complaints allege the ordinances place an unequal burden for improvements on new development and have thus injured the business of association members and diminished the value of their properties.

The St. Croix Valley Home Builders Association, 1477 S. Knowles Ave., New Richmond, filed lawsuits against the town of St. Joseph and the town of Oak Grove.

Both suits claim the impact fee ordinances violate state law and the equal protection clauses of the U.S. and Wisconsin constitutions.

The St. Joseph suit asks that the town be ordered to repay an estimated \$172,224 in fees paid by Builders Association members. The Oak Grove suit asks that the town be ordered to repay over \$453,000.

The Builders Association is a trade organization whose members are homebuilders, construction trade subcontractors, material suppliers and others engaged in related aspects of the residential and light construction industry.

The St. Croix County lawsuit asks the court to determine the validity of St. Joseph's impact fees ordinance, which was enacted in 2005 and amended Jan. 3, 2008.

The Pierce County lawsuit asks the court to evaluate the Oak Grove ordinance which was adopted in April 2003 and amended Jan. 30, 2008.

The St. Joseph ordinance imposes these fees: A roadway improvement fee of \$3,097 per residential equivalency unit, a public facilities fee of \$1,119 per unit, and a parks and recreational improvement fee of \$524 per unit.

The Oak Grove ordinance sets these fees: A road impact fee of \$2,590 per residential equivalency unit, a fire protection facilities impact fee of \$380 per unit and a fire protection well impact fee of \$220 unit.

To adopt an impact fee ordinance, a municipality must prepare a public facilities needs assessment following requirements in state law. According to the complaint, the towns did do assessments, but didn't comply with statutory requirements.

Both complaints allege the towns enacted the fees "without conducting a bona fide inquiry into the need for such impact fees, or to the extent to which such need related to proposed new construction, or the manner in which those paying the fee would benefit thereby, or without consideration of the extent to which past and future general property taxes, paid by the owners of the subject property, have contributed to or will contribute to the capital improvements contemplated by the ordinance."

The association is asking the courts to declare the town ordinances invalid, unlawful and unenforceable and to order the towns to repay the fees already collected.