



April 21, 2009

City ducks Building Industry Association lawsuit

Marcel Honoré
The Desert Sun

Desert Hot Springs avoided getting hit with a Building Industry Association lawsuit Monday, with the two parties agreeing to try to resolve their differences in the next 90 days.

The BIA faced a Monday deadline to file suit against Desert Hot Springs for its new arts in public places program and updated developer fees, BIA Desert Chapter Executive Director Fred Bell said.

But the city and BIA reached a last-minute "tolling agreement" — a legal tool that allows parties to keep talking after a statute of limitations expires. It buys 90 more days to work through the dispute.

"It took a lot of courage for the elected officials in Desert Hot Springs to make the decision to continue to talk," Bell said. "It's easier to fight than it is to talk."

The agreement follows a lunch meeting last Monday between Bell, Mayor Pro Tem Karl Baker and Councilman Scott Matas, as well as an emergency City Council closed-session meetings Monday and Thursday to discuss the pending lawsuit.

"Hopefully the matter will be resolved in that 90-day period," City Manager Rick Daniels said. "The only people who win in litigation are attorneys."

Daniels added, however: "As strongly as the BIA feels in their positions, we feel equally as strong."

Relations between the city and BIA grew strained late last year as Desert Hot Springs crafted its first art in public places program and prepared to update its developer impact fees for the first time in seven years.

The BIA threatened to sue. Some city residents and officials said the agency unfairly targeted a struggling city working to emerge from bankruptcy and years of financial mismanagement.

The BIA agrees the city must update its developer fees, Bell said Monday. The money funds public streets, parks, public safety stations and other improvements to accommodate city growth.

But the agency objects to the consultant-prepared "Developer Impact Fee Calculation and Nexus Report" used to justify the increase from about \$4,000 per unit to \$15,500.

"We thought that the study, at its core, made assumptions that were too simplistic" on flood control, streets, parks and recreation, and traffic projections, Bell said. The BIA said the city instead should raise its fee to \$10,400 per unit, roughly.

The City Council voted Feb. 17 to boost the fee to \$11,085, but that figure excluded parts of the Nexus report Daniels believed weren't "sophisticated enough" to endure a court challenge.

Bell said the BIA disputes the arts program on a technical point: The council approved the program as a zoning ordinance amendment instead of a developer impact fee. Developer impact fees are held to stricter standards than zoning amendments, he said.

Desert Hot Springs and the BIA now have until July 19 to resolve the dispute, officials said.
