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Local News

Fee accounting stinks...but will it matter?

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The homebuilders have a point.

The city of Bakersfield screwed up -- maybe even broke state law -- by failing to write reports every year for its traffic impact fee program.

An informal Californian survey of eight other cities and counties with traffic impact fees found all submitted the required annual reports for public review.

Even so, there will probably be no serious consequences for Bakersfield, industry veterans believe.

A lawyer for local homebuilders has said the accounting lapse could cost the city tens of millions in fee refunds. But as far as anyone can recall, such a case has never gone to court and certainly never succeeded.

The normally dry topic has generated surprising public heat in recent weeks, even sparking spirited television and radio coverage.

It's all leading up to Tuesday's special meeting, where the city council will vote on a proposed increase in traffic impact fees. The hike, to nearly \$13,000 per new home, would increase up-front developer costs by thousands per house. It is supposed to bring in nearly \$2 billion for road improvements over the next 25 years or so, the bulk of a roughly \$3 billion upgrade to the region's transportation network.

The council's expected approval isn't likely to end two years of study and negotiation, though.

Observers expect lawsuits, if any, will be filed after the vote.

WAITING FOR GO

Bob Decker, head of the Homebuilder's Association of Kern County, implied as much last week.

His board has given "pretty clear direction about what we will do in response to council action," Decker said.

The association's litany of complaints includes much more than the annual report. Still, it's a key element.

"We want to make sure funds are used wisely," Decker said.

In 1987, state Assembly Bill 1600 -- called AB 1600 in municipal planning circles -- nailed down how mitigation fees could be spent.

AB 1600 also spells out annual reporting requirements meant to give builders and the public a clear look at how funds are used.

"What we were provided definitely does not constitute a report," Decker said, referring to the thick collection of papers the city pulled together when asked for annual reports.

Deputy City Attorney Robert Sherfy said the city has provided all information required by law.

"I think we've complied with the spirit of the law," he said, "though maybe not every letter."

These days, if you want to follow Bakersfield's impact fee money, you have to cross-reference at least three sources.

A standalone report, Sherfy admitted, would be more convenient. City officials are considering using them in the future.

Still, he noted, the subject hasn't come up since Bakersfield's traffic impact fee program was adopted in 1992.

"We've been handling it this way for years and years and years," Sherfy said. "Nobody said anything."

THE VIEW FROM OUTSIDE

"There are no AB 1600 police out there -- except for homebuilders," said Joanne Brion, a Bay area impact fee consultant.

Brion, who works with both cities and developers, said fee conflicts are rarely decided by judges or juries. Instead, disputes are usually settled.

That means there's little case law to guide either side when it comes to AB 1600 fine print, said Peter N. Brown, a Santa Barbara attorney who co-authored an impact fee guide for the League of California Cities.

Neither Brion nor Brown could recall any California lawsuits over fee accounting.

Similarly, James B. Duncan, principal of national consulting firm Duncan Associates, headquartered in Austin, Texas, said he's not aware of any litigation specifically over accounting. The company follows impact fee news and court cases around the country at www.impactfees.com.

QUICK SESSION?

The city council was originally scheduled to decide the fee issue June 24. After a long meeting members postponed the vote, instead setting up Tuesday's special session.

Since the public comment period was officially "closed" on the 24th, Tuesday's meeting will include only discussion by councilmembers and city staff.

The meeting is at noon Tuesday in council chambers of City Hall, 1501 Truxtun Ave. It is open to the public.

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