

Tribune

EAST VALLEY • SCOTTSDALE

June 12, 2009

Suit challenges Mesa cultural impact fees

By Sonu Munshi
Tribune

Mesa and conservative think tank the Goldwater Institute await a court decision on whether the city can charge impact fees for cultural facilities.

Maricopa County Superior Court Judge Douglas Rayes heard from both sides Friday involving a lawsuit filed in 2007 by the Goldwater Institute on behalf of the Home Builders Association of Central Arizona.

Specifically, they're challenging one portion of the impact fees Mesa charges on every new home built in the city - a \$218 charge for cultural facilities - to raise money for the city's museums and to preserve archaeological finds.

According to the Goldwater Institute, local governments are supposed to use impact fees to pay for roads, water and sewer facilities, which typically get burdened when new development occurs. Goldwater Institute attorney Clint Bolick argued that Mesa cannot charge impact fees for unrelated facilities, such as museums.

E.V. cities defend fees for roads, sewers [<http://www.eastvalleytribune.com/story/137799>]

Goldwater Institute attorney Carrie Ann Sitren later told the Tribune that Rayes is now expected to decide on the case, which could take anywhere from a few days to a month or so.

Mesa spokesman Steve Wright said Friday the city would not comment on an ongoing case. In a statement dated May 22, filed by Mesa attorneys to Superior Court, the city contended that the Legislature authorizes cities and towns to assess impact fees on new development to offset the cost of providing "necessary public services," but that "the Legislature did not specify the particular municipal services for which a city may assess such fees ..."

The city also contended in that document that the homebuilders association "has failed to establish that impact fees may not be assessed for cultural facilities, that Mesa's fee is excessive, or that the fee is not warranted as the result of the projected impact of, and benefit to, new development."

According to state law, cities "may assess development fees to offset costs to the municipality associated with providing necessary public services to a development."

The Goldwater Institute's position is that Mesa's cultural facilities impact fees, unique to the city in the Valley, go beyond cities' power to charge such fees, "because they're not necessary services," Sitren said.

"Things like museums are meant to be paid for by all taxpayers, because it's a service they can enjoy equally. It's not fair to shove all those costs on new homebuyers," she said.

Cities collect impact fees from developers, who typically pass it on to homebuyers.

Sitren added that a city can legally adopt an impact fee provided the fees are spent on new or extended facilities because of new development, but, she pointed out, Mesa has not outlined any plans for a new cultural facility or expansion of an existing one to increase capacity.

"So, clearly this money is not being spent to alleviate the cost of new development," said Sitren.

Sitren said one example of Mesa using the money inappropriately was when it funded a chilled water line for an existing museum. State law requires this money to be spent on costs new homebuyers create, she said.


"It's hard to believe that new homebuyers need this new chilled water line or that new homebuyers caused the need for it," Sitren said.

When the case first arose in September 2007, a Mesa official told the Tribune the city has no five-year forecast to spend the money on cultural offerings, but that it would be set aside for future improvements.

Meanwhile, a legislative bill, SB1035, is pending in the Senate, which, if passed, would define necessary public services for which impact fees could be used. These include police and fire, water, sewer and parks facilities. It would exclude arenas and arts and cultural facilities.

The lawsuit in 2007 was triggered soon after Mesa raised total impact fees it charges developers to build new homes and commercial buildings to \$8,300 for a single-family home. The cultural impact fee has gone up from \$59 per single-family unit a decade ago to \$218 when it was last revised in 2007.



 © 2009 Freedom Communications / Arizona. Permission granted for up to 5 copies. All rights reserved.
You may forward this article or get additional permissions by typing http://license.icopyright.net/3.7220?icx_id=140456 into any web browser. Freedom Communications / Arizona and East Valley/ Scottsdale Tribune logos are registered trademarks of Freedom Communications / Arizona . The iCopyright logo is a registered trademark of iCopyright, Inc.