

# One complaint left standing in Curb North lawsuit

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By ARGEN DUNCAN Observer staff writer

A judge has dismissed three of four claims against the City of Rio Rancho in a lawsuit over impact fees.

Curb North Inc., the developer of Cabezon, filed suit against the city last October after a majority of the Rio Rancho Governing Body approved a two-year moratorium on 50 percent of residential impact fees and all of commercial impact fees.

Impact fees are charges developers pay to the city to cover the cost of major, system-level improvements needed to handle the growth the development would bring.

Curb North had excess impact fee credits for building system-level infrastructure with a cost above what it would have paid in impact fees if it hadn't constructed the infrastructure. Developers can sell impact fee credits to other developers to recoup some of their expenses.

In the complaint, Curb North said it and the city had agreed the company was entitled to \$8.3 million in credits, almost 63 percent of which it had sold. Curb North asked for \$5.6 million in damages, plus interest, other damages and legal expenses, citing severely reduced opportunities to sell its impact fee credits.

In the suit, Curb North:

- sought an order to prohibit the city from continuing to implement the impact fee moratorium;
- complained the moratorium constituted a conversion of property rights, so the city owed Curb North compensation;
- complained the moratorium indicated the city thought its infrastructure was sufficient for all commercial development and half of residential development for two years, meaning 80 percent of Curb North's remaining impact fees won't be needed in a reasonable amount of time and the city should refund the developer's money; and
- complained that the moratorium resulted in its impact free credits being made worthless, constituting a taking of personal property.

In documents filed in 13th Judicial District Court on May 23, the judge dismissed the claims of conversion of property rights, the request for a refund and the request for an order to stop implementation of the moratorium. The accusation of taking personal property remains active, and the plaintiffs can amend the claims, according to the document.

The city's response to the complaints said there was no taking of personal property because Curb North still has the right to put its impact fee credits to beneficial use.