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Sun Valley ord. ruled unconstitutional

By Gary Stivers
Monday, July 09, 2007



The Schaefer family overturned the City of Sun Valley's Workforce Housing Ordinance.

Fifth District Judge Robert Elgee last Tuesday, July 3, ruled the City of Sun Valley's Workforce Housing Ordinance #364 unconstitutional since the Idaho Legislature has not authorized collection of taxes to support construction of workforce housing.

Elgee said the in-lieu fee is actually a tax because the alternatives to the in-lieu fee –providing land for worker housing- is fraught with such difficulties it isn't a realistic option.

Elgee said proper zoning, water and sewer connectivity and other issues present "numerous obstacles an applicant would confront by choosing any other alternative options, [and therefore] the city has effectively required an applicant to pay an in-lieu fee."

City attorney Rand Peebles and co-counsel Geoffrey Wardle argued the Workforce Housing Ordinance should be recognized as a permissible constitutional exaction pursuant to the police power of Article XII 2 of Idaho Constitution. Peebles and Wardle also said Idaho's Local Land Use Planning Act provides cities with the authority to assess fees for affordable housing.

Story continues below



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The Schaefers, through attorney Christopher Meyer of Boise's [Givens Pursley](#) firm, argued there is no legislation authorizing the city to assess the \$11,989.97 fee on their property at 59 Lane Ranch Road and without such authorization, the fee amounts to an unauthorized, unlawful tax.

On Sun Valley's police powers

Elgee found the 2004 case *Plummer v. City of Fruitland* provides for a city's police power but maintains that "a municipality's ability to tax requires a separate authority," an authority he found lacking.

Further, Elgee noted "a city's police power does not authorize a city to *tax* the public but to *regulate* the public and in some instances assess a fee incidental to the regulation."

Elgee found in *Potts Construction Company v. North Kootenai Water District* that "a municipal corporation's taxes on the general public require specific legislative authorization."

On whether an in-lieu fee is a tax or an exaction, Elgee said the city's attorneys argued the in-lieu fee was an exaction, not an impact fee but cited no Idaho law to support it. Elgee said he could find no law supporting it, either.

Saying the Idaho Legislature hasn't provided Sun Valley with authorization to collect revenue for housing, Elgee found Ordinance 364 "is not a lawful exercise of the City of Sun Valley's Police Power."

What's next?

Going forward, questions on the issue concern whether Sun Valley will be asked to refund all fees collected under the Workforce Housing Ordinance and what will happen on the city's political front.

City attorney Rand Peebles said the city received the judgment only last Friday and that city leaders haven't yet met on the issue.

"The judgment applies to the Schaefers only," Peebles said. "The city hasn't yet had an opportunity to look at what kind of process the city is mandated to follow. The Mayor and Council will meet three days next week, the 17th 18th and 19th and I suspect Mayor Thorson will bring it up."

The city's other affordable housing law, its Inclusionary Housing Ordinance #363, was not considered in Judge Elgee's review.

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