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Road fee challenge tossed out

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Valley Springs Plaza in 2004. Enterprise file photo

Calaveras County's 2004 ordinance charging developers a fee to help cover the costs of road improvements has survived a legal challenge brought by the builders of a Valley Springs shopping center.

Visiting Superior Court Judge Duane Martin issued his ruling June 29 upholding the county's Road Impact Mitigation (RIM) Fee program.

A lawsuit filed in 2004 by developers Guy Meyers and Roy Hifai challenged the validity of the RIM fee as unfairly charging them for impacts brought in by their shopping center, Nove Plaza.

Meyers and Hifai challenged the RIM fee after being charged $36,000 for impacts to Calaveras roads from their project. Ken Foley, the attorney representing Meyers and Hifai, specifically challenged the inclusion of Pool Station Road, near Copperopolis, in the list of RIM fee projects.

After three days of testimony the court held in favor of the county, "that the RIM Fee program, including the RIM Fee ordinance and nexus study, was constitutional and complied with all statutory requirements."

The court denied all of the challenges and held that "the Board of Supervisors considered all of the evidence presented to it at the time it adopted the RIM Fee program and that the evidence fully supported the Board of Supervisors' decision to adopt the RIM Fee program." Foley said that he plans to appeal the decision, adding that "the process is just beginning."

The law imposing the fee was passed on a 3-2 Board of Supervisors vote in February 2004. It called for a $3,300 levy on each new single-family home and $1.90 per square foot of new retail space.

The idea was to raise about $38 million from those fees and package that with $119 million from gasoline, sales, parcel, or transient occupancy taxes to pay for a long laundry list of road improvements across the county. Any of those other revenue sources would have to be approved by voters.
The developer fees came about after a contentious history of road planning, including a citizen-brought lawsuit.

In 1984, the late Phil Cain of Burson sued the county for having a growth-inducing General Plan without addressing impacts of growth. As a result, a moratorium on construction was adopted until the General Plan could be updated.

In 1986, the plan was amended to include a call for road fees, but they were never implemented.

So in 2003 Cain, Joyce Techel of Burson, and the "Concerned Citizens of Calaveras County" sued the county again. When the fees were adopted early the next year, the lawsuit was set aside.

Soon after the so-called Road Improvement Mitigation fee plan was adopted Meyers and Hifai challenged it in court, questioning why they should have to pay money that they contend could end up being spent on roads far from their development.

The main road they cited is Pool Station, a two-lane backroad from San Andreas to Highway 4, coming out just east of Copperopolis. The price tag on its improvement alone was estimated at about half the $37 million the county hoped to eventually collect from developers.

None of the money raised from the RIM fees, about $5.8 million, has been spent so far, Rob Houghton, the county's director of Public Works, said a couple of weeks ago.

Houghton is working on a funding proposal he plans to present to supervisors in the next couple of months.

"The most likely practical option is a half or quarter-cent sales-tax increase that has commonly been adopted in other jurisdictions around the state," he said then. A quarter-cent boost in the 7¼-cent sales tax would bring in $17 million over the next 20 years, based on 2001 retail sales figures. A half-cent increase would double that. Any such increase would need voter support.

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