



## Drainage appeal is being considered

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NEW BRAUNFELS — The City Council will huddle with its attorneys next week to decide whether to keep fighting to save its drainage impact fee.

Since 2005, the city has collected the fee from developers, charging them for impact their projects have on the city's drainage system. But last week, the Texas Third Court of Appeals ruled the city's fee invalid.

"We were obviously very pleased and we fully expected it to come out this way," said Steven Lange, past president of the Greater New Braunfels Home Builders Association, the lead plaintiff in the suit. "It was not a fair and equitable fee. It was a tool to charge developers to fix past drainage problems in New Braunfels and the court saw right through it."

The ordinance was passed in 2005 and amended twice. In its final form, it charged developers \$600 for each single-family home and 14 cents per square foot for most other developments. The city received about \$300,000 in fees, which will have to be returned, if the city doesn't appeal the latest ruling, said Mayor Bruce Boyer.

Boyer said the City Council will have to revisit the issue of a drainage impact fee, and will likely start the process of adopting a new fee, being more careful to follow state law.

"But it is a lengthy process and we cannot afford to not start taking care of our drainage maintenance and infrastructure until we come up with a new fee," he said. "The city already has a dire need to get the facilities we do have maintained. And I think you will see us put resources into drainage in our new budget."

While cities have the power to charge developers a fee to offset new buildings' impact on the city's drainage system, New Braunfels didn't follow state law in adopting the fee.

The ordinance tracks Chapter 402 of the Local Government Code, but "the city failed to follow the statutory requirements imposed by that chapter, including publishing notices, holding hearings, assessing the charges against all property owners within the service area, and exempting lots on which no structure exists," the appeals court ruled, reversing an earlier district court decision.

The city also did not do the detailed study of the various watersheds in town and calculate the true cost of the impact of development on the drainage system, but "pulled a fee out of the air," said David Pfeuffer, another plaintiff.

Pfeuffer and Lange said they would not object to a drainage impact fee if they believed it was fair and

followed state law.

"People think it's just developers not wanting to pay their share, and that's not it at all," Pfeuffer said. "It was a really bad ordinance."

The city's attorneys conceded the ordinance violated Chapter 402, but then argued the city didn't rely on the power it is given in that chapter to pass the law, but instead relied on the city's "police power as a home-rule municipality," according to the court decision.

The court found the way the ordinance was written, it clearly relied on Chapter 402.

"This argument presents us with the age-old challenge of determining whether something that looks like a duck, quacks like a duck and walks like a duck is nevertheless a chicken," a footnote to the decision reads.

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