

City prevails in settlement with developer

Millions saved when judge favors the city, and then the case is settled out of court

By Jim Hart

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The city of Sandy recently saved nearly \$2 million in a lawsuit that has been ongoing for nearly five years but has never reached a jury.

A trial had been scheduled to begin Monday, May 14.

In an out-of-court agreement, the city settled with the 4-J Land Company, developer of Sandy Bluff, according to City Attorney Paul Elsner of Beery, Elsner & Hammond in Portland.

This 2007 Clackamas County Circuit Court case involves 4-J suing the city for compensation for land and certain improvements it says were “taken” because the city required 4-J to construct road improvements for the Sandy Bluff development and dedicate land for Jewelberry Avenue.

The city offered to give system development charge (SDC) credits only for the difference between the cost of a local street and the wider collector street.

Elsner said the settlement would give 4-J, represented by attorney Caroline MacLaren of Black Helterline in Portland, an opportunity to recover from future development some of the costs of installing the improvements to Bell Street and Jewelberry Avenue.

The 4-J Land Company built the streets wider than a local street because the wider street was mandated by the city’s Transportation System Plan.

But 4-J could have received in SDC credits the difference in cost to build a wider collector street instead of a local street. Elsner said that was about \$257,000.

In the settlement, the city will give 4-J about \$88,000 of SDCs it has received from builders plus SDC credits up to about \$160,000 when the city receives SDCs from builders in phases 4, 5 and 6 over the term of the agreement, which is 10 years.

“If development occurs in phases 4, 5 and 6 of Sandy Bluff, there’s a chance that (4-J) could get up to approximately \$257,000 over the course of the next 10 years,” Elsner said of the settlement, “but there’s no guarantee.”

“The only guaranteed amount is the (\$88,000) cash payment we’re making now. And then they get to apply for, and the city will consider, creation of a reimbursement district, which is a late-comers agreement, for (development alongside) Jewelberry.”

The SDCs collected for the most recent building activity (about \$95,000) is where the cash comes from, less some of the city’s attorney’s fees.

But Elsner says the city did not have to spend any tax dollars for this settlement — only SDCs given to the city by developers.

City Manager Scott Lazenby said he’s happy about the way the case played out.

“I’m very pleased with the settlement and with the way our attorneys represented us,” Lazenby said. “I think it’s settling in a way that’s definitely a benefit to the city, but it’s fair also to the folks who filed the lawsuit.”

Lazenby said he was glad the whole issue had been settled, after so many years, especially because the legal cost had been kept relatively low.

“We felt very confident about winning the case,” he said, “but the attorney-fee clock would just start flying if we had to have courtroom time — and you never know what the outcome is going to be.”

