

City attorney's opinion on fee refund released to public

By MADELYN FAIRBANKS, Published Nov. 28, 2012

MONROE - The city attorney had recommended back in September that the City Council refund homeowners for overcharged school impact fees rather than the home builder.

"I would recommend refunding the overpaid amount to the current owners of the underlying lots rather than to the original developer," city attorney Zach Lell wrote in a Sept. 28 e-mail to city administrator Gene Brazel. "The expense of the city's impact fee assessment was presumably passed through to the homebuyer from the original developer as part of the total purchase price. Refunding these monies to the developer would thus result in an unjustified windfall to the developer."

He also said there isn't definitive guidance in state or city law as to who should get the refund.

It is unclear why the city attorney's opinion was not disclosed during recent public debate.

The council has been discussing the issue since September when it discovered it overcharged for school impact fees. The council voted unanimously at its Nov. 6 meeting to give the refunds to the 16 developers who were overcharged \$941 for the fees.

The e-mail was forced into the public discussion by state auditors who are in town for what the state auditor's office has described as a "routine" audit. The refund issue has been put on hold while auditors research the legality of the proposed refunds.

City finance director Dianne Nelson said earlier this month that auditors are looking into the "legality of the refunds," which has temporarily halted the process of refunding the money.

She said that the auditors will check out the process with the attorney general before any refunds are issued.

The error occurred when the city adopted its most recent capital facilities plan back in September 2011 and neglected to update the impact fee amount, leaving the old amount on the books. The plan was corrected this past October and now reflects the correct fee amounts.

The error was discovered by public works director Brad Feilberg this past Sept. 20 when he was reviewing the capital facilities plan in preparation for an upcoming planning commission meeting to discuss giving developers more of a discount on school impact fees.