

The Mercury News

MercuryNews.com

Judge rejects Atherton motion to dismiss road impact fee lawsuit

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Posted: 12/20/2010 11:17:08 PM PST

Updated: 12/21/2010 05:30:32 AM PST

A judge has refused to dismiss a development company's lawsuit that seeks to recover \$298,000 in road maintenance fees it alleges Atherton illegally charged.

In a statement issued Monday, the town acknowledged that a San Mateo County Superior Court judge on Friday denied its motion to dismiss the lawsuit filed against it in August by Menlo Park-based Pacific Peninsula Group. The judge set a trial date for June 13, 2011.

From 2000 to 2009, Atherton charged a "road impact fee" for construction projects, based on the premise that traffic from work crews contributes to street damage. The fee's legality came into question after a state appellate court ruled in 2005 that a fee charged by Kern County for trucking sewage violated state laws.

In December 2009, the Atherton City Council voted to rescind the road impact fee. Two months later, the council voted to refund fees paid between July 2006 and September 2009, up to \$1.6 million total.

Then in July of this year the council, citing budget constraints, voted to refund just 40 percent of fees and narrowed the eligibility for refunds to only

those who paid fees that the city increased in August 2007.

Representatives for Pacific Peninsula Group were not available for comment Monday. In August, company attorney Walter McNeill said the full amount should be repaid because the fees were illegal, period.

On Friday, the judge appeared to agree.

"The court questioned whether the

Town's rescission of the road impact fee constituted an admission that the fee was illegal," Atherton officials said in the statement.

Following the judge's decision, both parties conferred and agreed to try mediating the dispute, Atherton officials said. The first mediation session is expected to be scheduled for January, said Leah Castella, Atherton's outside legal counsel on the matter.

The town has maintained that Pacific Peninsula Group's claim is invalid because it didn't request a refund within 90 days of paying the fee, as required by state law.

McNeill has countered that the 90-day provision is not applicable because the fee was illegal in the first place.

Atherton collected \$5.5 million in road impact fees during the nine-year period, a city official said in February. From September 2006 to September 2009, it pocketed nearly \$2.6 million in fees.

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