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Parties disagree on fee decision

By Jenni Vincent, Journal staff writer

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MARTINSBURG - Justice Elliot Maynard's ruling on the capacity improvement fee has elicited strong reactions from both its critics and supporters.

Since its inception, Larry and Laura Faircloth said they felt strongly that the fee was wrong and needed to be challenged.

That's exactly what they did last October, when they filed suit in Berkeley County Circuit Court against the county's Public Service Water District and Sewer District.

Little did the couple know that it would take only a few months to get an answer-especially one that is as strongly worded as Maynard's declaratory judgment order, which declared that neither the county water nor sewer district have the authority to impose the fee, they said Friday.

It also means that the fees can't be collected now due to Maynard's decision, said Laura Faircloth, who represented her husband in the lawsuit.

It's important that Maynard pointed out that the fee is essentially an impact fee, especially since the necessary requirements are not met for that to happen, she said.

Part of the order is aimed at insuring that "Berkeley County won't have water and sewer czars," Laura Faircloth said.

As happy as they are with their own victory, they are equally excited about what this may mean to others, she said.

"If there was going to be any other kind of legal claim for relief by other people, those people would need to file an entirely separate claim. But I think it would be wise to use this order as a springboard to say, 'If these fees were not legal when they were assessed against me, then I think I should get my money back - with interest,'" Laura Faircloth said.

Larry Faircloth said he believes this decision may mean that new houses will begin to be built again soon.

"When we got the order I called a number of developers and they said not having to pay these fees would make a real difference. One in particular said if he didn't have to pay these fees he'd go get 10 building permits and start building. He said, 'Larry, I can put all these people back to work, including block layers, framers and roofers,'" he said.

That developer also told him "... that \$7,000 I save will keep the interest paid on a house for a year," Larry Faircloth said.

It's been restrictive to small- to medium-sized builders and developers, he said.

"The mere fact that you can reduce the price of a home by \$7,000 is also huge," Larry Faircloth said.

Homeowners are also paying this cost in their mortgage and that amounts to a "pretty large figure" over the life of the mortgage, he said.

"Regardless of what the price of the house was, here we're calculating what the interest and payback would be of the \$6,770 over 30 years and the payment would have been \$36.26 per month extra on the house times 360, which comes out to \$13,053.60," Larry Faircloth said.

Officials, while they disagree with the order, are still analyzing it and trying to decide what their next step will be.

Water District attorney Hoy Shingleton said he only received the order this week and will be reviewing it this weekend in order to discuss it with board members at Monday evening's meeting.

"We're obviously surprised and disappointed, so we have several issues to address," Shingleton said.

Possibly appealing the decision to the state Supreme Court is a possibility that will be discussed with board members, he said, adding that the board has 120 days to file an appeal.

Another possibility is to ask Maynard for a stay of his ruling, Shingleton said.

Shingleton said he is unsure if the PSWD is currently collecting the controversial fee.

Water District Executive Director Paul Fisher said he disagrees with the idea that the public service districts are part of the county commission.

"This is not a county agency, it is a quasi-governmental agency. We're established by the state of West Virginia. The vehicles we drive have state license plates," Fisher said.

He said there are two ways to establish a municipal utility in the state, one is a "department within a county commission's regime, while the other is public service district."

While Martinsburg has its own city water department, the county does not have a water department, Fisher said.

"This county has a public service district," he said.

Sewer District General Manager Curtis Keller said Maynard's opinion is in "definite contradiction to our opinion and our legal counsel is looking at it with the possibility of appealing it."

It will also likely be discussed at the sewer district's board meeting on Tuesday at 7 p.m., Keller said, adding that copies of the decision were sent to board members Friday.

The district is not currently charging for this fee, he said.

But there's no disputing that it's an important revenue source since it generated \$1,404,658 last year, Keller said.

If it is eliminated, customers will pay higher sewer bills, he said.

"Every customer will pay more for the development of the county. Developers will continue to build on the back of the customer. But with the capacity improvement fee, they were paying their fair share," Keller said.

"The sewer bills will go up because the \$1.2 million annual debt service that was being paid out of it will have to be paid out of the operating revenue," he said.

This possibility comes at a "very tough time" due to the sluggish local economy and nutrient limits being imposed for the Chesapeake Bay, which also have local ramifications costs, Keller said.

-Staff writer Jenni Vincent can be reached at (304) 263-8931, ext. 138, or jvincent@journal-news.net

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