

The Herald-Mail

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04/15/2010

Stay issued in Berkeley County water/sewer legal battle

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MARTINSBURG, W.Va. — The West Virginia Supreme Court of Appeals on Thursday granted a stay requested by Berkeley County public water and sewer districts in their legal battle with developer Larry V. Faircloth.

The utilities requested the stay pending their high court appeal of a judge's declaratory judgment that deemed the utilities' collection of capacity improvement fees to be illegal.

A stay typically suspends a judicial proceeding from continuing.

Since ruling against the utilities in an order signed Jan. 29, former state Supreme Court justice Elliott E. "Spike" Maynard removed himself from the case and filed candidacy papers to run for Congress in the 1st District in southern West Virginia.

Last month, Maynard's replacement, Judge John L. Henning, denied a motion to vacate or void Maynard's declaratory judgment by attorneys for the water district.

Henning's decision favored Larry V. Faircloth Realty Inc., which has challenged the legality of the capacity improvement fees. The utilities collect a total of \$6,770 per proposed residential building lot as part of financing upgrades to their respective systems.

If Faircloth's suit is successful, utility officials have said customers would have to shoulder substantial rate increases to cover the cost of new infrastructure that has been financed with the fee structure now in question. Last year, both districts had more than 19,000 bill-paying customers, serving an estimate of more than 40,000 people.

In his ruling, Maynard said the utilities exceeded their powers when they imposed the fees, which he ruled are "substantially the same concept and fee as an 'impact fee'" that is allowed under the Local Powers Act. The Berkeley County Commission and its agencies are disqualified from imposing and collecting impact fees because it has not adopted a comprehensive zoning ordinance, which is a tenet of the Local Powers Act, according to Maynard's decision.

The West Virginia Public Service Commission, which regulates the utilities, also was faulted by Maynard for allowing the fees to be collected, according to the judge's order.

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