

City loses lawsuit; judge to determine damages

Argen Duncan / Rio Rancho Observer Staff Writer

The City of Rio Rancho has lost a lawsuit over impact fees.

Following a district court non-jury trial last week, Judge James Lawrence Sanchez of Valencia County found in favor of the plaintiff, Cabezon developer Curb North, said city spokesman Peter Wells.

Sanchez has not yet set the amount of the damages payment.

"Legal fees and damages are not covered by the city's insurance," Wells said in an email. "These costs will have to come from the city's general fund."

Curb North sued the city in October 2012, seeking \$5.6 million in damages, after a majority of the governing body approved a two-year moratorium on 50 percent of residential impact fees and all of commercial impact fees. Impact fees are payments developers make to the city to offset system-level infrastructure improvements or expansions the city has to make to accommodate new development.

Curb North had put in more infrastructure than required for Cabezon, so the city issued it impact fee credits. The developer could use those credits to avoid paying impact fees on future developments or sell to them other developers, which could, in turn, use the credits to avoid impact fees.

Curb North argued that the city was causing financial harm to the company by severely decreasing its opportunity to sell its impact fee credits.

In a phone interview Monday, outgoing Mayor Tom Swisstack said he and Curb North warned of lawsuits if the moratorium went forward, devaluing Curb North's credits. Swisstack opposed the moratorium, but the city charter doesn't allow him to vote at governing body meetings except in the case of a tie, which didn't happen with the moratorium.

"I think this is a clear indication that what might be perceived as good economic development, if it has a negative impact on one of the larger developers in the area, that has to be taken into consideration before we consider extending this impact fee moratorium again," Swisstack said.

The city will be held accountable for any continuing devaluation of Curb North's impact fee credits, he added.

The moratorium expires this fall.

Soon after the moratorium passed, Councilor Chuck Wilkins, who supported the move, said he thought the city would win the lawsuit, but even if it lost, damages wouldn't exceed \$1 million, which the city would more than make up for with extra development the moratorium attracted.

Monday, he said that's still his opinion, although it's too early to say for sure. He's wondering whether attorneys for the city will appeal.

"I don't think it's a done deal yet," Wilkins said. "But it definitely didn't go the way I had hoped."

Still, he said he thought the jobs the moratorium brought in would be worth \$200,000 or \$300,000 of damages.

Wells said the final order, which sets out findings of fact and the judge's decision, must be issued by March 12. If the city and developer can't agree on the wording, the judge will decide in another hearing.

After the final order is issued, Wells said, the judge will decide the value of Curb's claim. Then, the city will decide whether to appeal, he said.

The city doesn't know how much it will have to pay in legal fees because the process isn't over, Wells said.

Councilors Mark Scott, Wilkins, Tim Crum and Lonnie Clayton voted for the moratorium in September 2012. Councilors Patricia Thomas and Tamara Gutierrez voted against it.

