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Court gives Bellingham victory over developer in parks impact fee dispute

JARED PABEN / THE BELLINGHAM HERALD

BELLINGHAM - A state appeals court has sided with the city of Bellingham in its dispute with a developer, saying the city was right to charge parks fees for an apartment project.

A decision on Tuesday, May 26, by the state Court of Appeals, Division I, stated that city officials were right to charge Belleau Woods II LLC more than \$300,000 in fees meant to pay for new parks and trails. The fees were charged for phase two of the Belleau Woods project, located south of West Bakerview Road and east of Northwest Avenue. The second phase included more than 100 apartments in five buildings.

The developer and landowner, Torrance, Calif.-based Tim Carey, said he plans to appeal to the state Supreme Court, calling this the third quarter in a game.

"If I'm not willing to stand up to a city that says 'OK, we can change the rules midstream ... what are they going to do to the next guy?'" Carey said.

In July 2004, Carey signed a deal with the city that spelled out requirements for construction of Belleau Woods phase two. Part of the contract required him to pay or set aside land to support neighborhood parks and trails. He dedicated land to the city to be conserved and for future construction of a trail, satisfying that requirement. He was told that he'd have to pay nearly \$9,000 to satisfy the parks requirement. The fee wasn't to be paid until he picked up building permits.

In February 2006, the city passed a new law requiring developers to pay parks impact fees to support creation of new parks citywide. Carey later applied for building permits and, in early 2007 when he picked up the first one, he was told he'd have to pay \$111,215 under the new law.

He said the new law exempts him from the fee because he already took steps to support parks and trails.

"It's not to be mitigated 100 percent," he said. "It's not to be mitigated dollar per dollar. Mitigation is mitigation."

But city officials said he didn't go far enough to become exempt from the impact fees, and new law requires him to ensure he pays to serve all the demand from his apartments. They said they'd still credit him the amount of the dedicated land.

The city never intended the impact fee law to allow developers to only partially mitigate their projects' impacts, said

Jeff Capell, former Bellingham assistant city attorney. He's now an attorney at the city of Tacoma.

"It was nice to have that ruling for the city, especially in times when funds are short," Capell said.

The city already gave Carey back \$326,000 in parks fees after Whatcom County Superior Court in June 2008 ruled in Carey's favor. The new ruling means the money needs to be returned, Capell said.

Leslie Bryson, design development manager at Bellingham Parks and Recreation, said the money will be used to buy parkland or develop parks or trails in northwest Bellingham.

But Carey said he'll appeal to the Supreme Court, which will decide on whether to hear the case. The court rejects many cases, but this one has a massive impact, he said.

"This is about a government's ability to legislate around a contract, which has widespread ramifications for a lot of other issues," he said.

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