

## Court rules in favor of Bellingham in parks fee dispute with Belleau Woods II

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**BELLINGHAM** - The city won its legal battle with a developer over how much dedicated land should be credited to the developer's parks impact fees.

The city was also awarded all its attorneys' fees and costs.

The state Court of Appeals, Division I on July 9 ruled in the case of Belleau Woods II, LLC v. City of Bellingham. It was the second time the parties argued in front of the appeals court in a parks-fee-related case.

Belleau Woods is an apartment complex southeast of Northwest Avenue and West Bakerview Road. As a condition of the project, the city required that about 167,000 square feet of land be set aside for creek and wetland protection and a future public trail. About 6,500 square feet of the land was set aside for a trail, according to the court decision.

The fair market value of set-aside land must be credited to the parks impact fees. In this case, Belleau Woods owed about \$300,000 in parks impact fees.

Belleau Woods argued that the value of all set-aside land should be credited, while the city argued that only the portion used for trail should be credited. The city won in front of the hearing examiner, Superior Court and appeals court.

"We never believed for a second that we're obligated to give credit for all of the open space that a developer may keep on their land," assistant city attorney James Erb said. "That's not a common-sense reading of the statute or of the City Council's intent when they passed it."

The ruling was on a narrow question, he said, and the Court of Appeals didn't make any new law. It would have made a big difference to the city had the court ruled the other way, he said.

Erb said the court awarded the city its attorney fees and costs because it won at all three levels. The city is still working to tally its legal expenses, he said.

The trail hasn't been built yet.

"We were just waiting for this to be final and make sure we have the money and don't have to give it back, because we will use at least a portion of that money to build (the trail)," said Leslie Bryson, design development manager at the city's parks department.

The appeals court warned the city not to "artificially lessen the total area of the trail so as to deprive Belleau Woods of the park impact fee credit to which it is fairly entitled." The court noted that, according to a park classifications appendix, between 25 feet and 50 feet of width is usually set aside for trails (not all of that is paved or gravel).

The parks department hasn't yet established the amount of land the trail will need, but "it'll be a typical trail easement width," Bryson said. "We never said we wouldn't be fair."

Erb said the city will be constrained in building the trail because it can't violate its own wetlands laws. The public will be able to use only a small portion of the total land set aside, he said.

Torrance, Calif.-based Tim Carey, managing member of Belleau Woods II, didn't return messages by The Bellingham Herald seeking comment. The company could choose to ask the state Supreme Court to hear the case.

In May 2009, the appeals court sided in favor of the city in a related dispute with Belleau Woods. In that case, the argument was whether, given the set aside of land, the developer owed any parks impact fees at all.

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**SEE THE DECISION**

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(<http://media.bellinghamherald.com/static/images/downloads/JaredPaben/Belleau%20Wood%20v%20COB.pdf>) to read a copy (PDF) of the appeals court decision in the case Belleau Woods II, LLC v. City of Bellingham.

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