City loses fight with N.M. couple

By Brandi Hart, McKinney Courier-Gazette
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The city of McKinney lost a five-year battle against a New Mexico couple who sued the city for how it spent impact fees to develop a road adjacent to land the couple owned north of State Highway 5.

Roger and Jennifer Sefzik sold 15 acres to a developer that built the Creek Point Apartments north of SH 5 and along McIntyre Drive. The Sefziks filed their original petition for suit July 29, 2002, citing the single issue in the case was whether the city took the acreage without providing adequate compensation.

The petition states the city made a condition that a building permit be issued no earlier than July 28, 2000, for the apartment complex. The petition also states the city required the apartment complex developer to pay $269,360 to the city for the construction of the extension of Wilmeth Road through a facilities agreement in order for the developer to obtain the building permits. The future construction of Wilmeth Road would be adjacent to the apartment site, and the developer paid the city $269,360 for construction of the road extension.

The city then issued building permits for the apartment complex after the developer paid the money, the petition states.

Judge Chris Oldner of 416th District Court awarded the Sefziks damages of $263,972.80 Monday. The damages are the amount paid under the facilities agreement ($269,360) for the Wilmeth Road improvements in excess of any amount roughly proportional to the impact of the development on Wilmeth Road (2 percent or $5,387.20.)

Oldner also overruled an objection to the deposition testimony of Jack Carr, the director of the city's engineering department, and Mike Rozelle, a civil engineer who previously worked for the city.

The Sefziks claimed the city violated the Texas Constitution by forcing the developer to pay for the extension of Wilmeth Road in order to develop the apartments. They said it was unconstitutional because the future extension of Wilmeth Road doesn't address or lessen traffic impacts from the development of the apartment site

The Sefziks claim they were assigned any claim the developer had against the city for imposing the requirement to pay for the extension of Wilmeth Road. The other reason why forcing the developer to pay the city for the extension of Wilmeth Road before the city would issue the building permits is unconstitutional is there is no rough proportionately between the traffic that would be generated by the apartment and the road extension would occur after the apartments would be built, the petition states.

The Sefziks asked the court to find that a taking of land occurred and that they be awarded $269,360 in damages, which is the same amount the developer of the apartment site paid the city for the extension of Wilmeth Road.

Mark Houser, attorney for the city of McKinney, stated via e-mail that the city disagrees with the measure of damages awarded to the Sefziks.

In the city's answer to the Sefziks' original petition for suit, the city is claiming the Sefziks have not provided sufficient facts to establish their cause of action for an unconstitutional taking of the land in the two-year statute of limitations, and their allegations are "vague, conclusory and unsupported."

The answer to the petition also claims the city's roadway impact fee requirements were adopted for

legitimate purposes substantially related to the health, safety and general welfare of the public, and were not adopted for the city's own economic advantage.

The Sefziks have until Dec. 7 to submit their judgment to 416th District Court.

Mayor Bill Whitfield and city council member Pete Huff could not be reached at their homes for comment Monday night.

Contact staff writer Brandi Hart at hartb@acnpapers.com. To post comments online, access this story at www.scntx.com.