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Mesa says it's too late to repeal 'cultural' fee for builders

By Jason Massad
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Mesa will argue in court that a legal challenge to the fees it charges developers to help build city museums and preserve archaeological finds is past the point it can be repealed. The Phoenix-based Goldwater Institute, representing the Home Builders Association of Central Arizona, filed a complaint in Maricopa County Superior Court in September, after Mesa increased the amount it charges developers to build houses and commercial buildings in the city.

The impact fee averages about \$8,300 for the average single-family home. That number includes a \$218 charge for the "cultural" component of the fee that's being challenged, according to city officials.

The changes made Mesa the 12th-highest among Arizona communities in the amount it charges in impact fees.

However, the Goldwater Institute argues that Mesa has no plan to use the money to build additional cultural offerings, a requirement of the fees.

Mesa has no firm five-year forecast for how the cultural fees will be spent, city officials have said.

But attorneys for the city argue that the statute of limitations to litigate the fee has passed, according to city legal filings.

"(The homebuilders' association) and its members have had knowledge of, and been subjected to, the fee for nearly a decade," according to a legal filing by Mesa seeking to dismiss the case. "Any right to object the fee accrued when it was enacted."

Clint Bolick, an attorney for the Goldwater Institute, said that the city's legal maneuvering avoids the substantive issues of the lawsuit.

"The fees affect new people every year," he said. "That can't be foreclosed on by the fact that the fees were enacted (earlier)."

The Goldwater Institute's lawyers will argue that the increase in fees are not the same as the ordinance that created the cultural impact fees enacted in 1998.

The first arguments in the case will be heard Friday in Maricopa County Superior Court.



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