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State's High Court denies city's petition

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AUSTIN — The City of New Braunfels will have to go back to the drawing board if it wants to collect fees from property owners and developers whose projects impact the city's drainage system.

The Texas Supreme Court on Friday declined to review an appeals court decision that deemed the city's drainage impact fee illegal and invalid. The Supreme Court's order to deny the city's petition to review a Third Court of Appeals decision effectively ends a two-year legal battle over the city's stormwater connection fee.

In August, the Third Court ruled that while cities maintain the right to assess a fee to developers to offset potential impact to the city, New Braunfels did not follow state law in assessing the fee.

"The city failed to follow statutory requirements imposed by the chapter, including publishing notices, holding hearings, assessing the charges against all property owners within the service area, and exempting lots on which no structure exists," the Third Court of Appeal ruled. The city "may not pick and choose the provisions with which it wishes to comply."

The state's high court agreed and refused to move forward with the city's appeal, striking it down before the case moved past the initial stages.

"It sounds like the lawsuit is over at this point," said City Attorney Alan Wayland.

The city now has 15 days to ask the court to reconsider its decision, which carries with it a low percentage of being granted. Late Friday afternoon, Wayland said city officials have not received official word from the court and have not yet been briefed by their attorneys. The Supreme Court did not issue a written opinion or reference why it ruled against the city.

The city started collecting the fee from property owners and developers in 2005 for the impact their projects would have on the city's drainage system. In its final version, the fee charged owners of a new development within 3,000 feet of the city's drainage system \$600 for each single-family or two-family lot and 14 cents-per-square-foot for most other developments.

The New Braunfels Great Home Builders Association, Oakwood Estates Development Co. and two individual property owners sued the city the same year over the fees,

claiming that they told the city council and officials in 2005 that their method for implementing the stormwater fees was not legal.

The city could now be forced to return the \$300,000 in drainage impact fees it collected since 2005. The money is being held in escrow and no decision has been made on whether the funds will be returned to the property owners who paid them.

In November, lawyers hired by the group suing the city told the Herald-Zeitung they had not yet filed a motion asking for the money to be returned. Robin Melvin, one of three attorneys representing property owners, did not return a phone call from the Herald-Zeitung Friday.

The city will also have to pay back about \$60,000 to \$75,000 in attorney fees spent by the group suing them. The city, itself, has reported spending about \$30,000 defending the suit since 2005. It is unclear if the city can appeal the decision to the U.S. Supreme Court, Wayland said.

The city's attorneys did not return a phone call from the Herald-Zeitung.

Friday's ruling marks the second recent court battle the city has lost. In September, a state District Judge ruled the city's river management fee to be an illegal occupation tax aimed at generating revenue, not regulating the river, and that city officials failed to comply with essential requirements of its charter when it enacted the ordinance. The city could be forced to return \$1.2 million in it collected since 2001.

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