

COUNTY TOLD TO RETURN FEES TO BUILDERS, HOMEOWNERS

[DU PAGE SPORTS FINAL Edition]

Chicago Tribune - Chicago, Ill.

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Date: Jan 19, 1999

Start Page: 1

Section: METRO DU PAGE

Document Types: News

Text Word Count: 771

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In an unusual ruling, a judge has ordered the DuPage County Board to reduce future property taxes by an estimated \$2.25 million once claims and legal fees have been paid in a controversial class-action lawsuit that sought the refund of impact fees wrongfully collected in 1989 and 1990.

Lawyers for the county say they intend to appeal the ruling, which was entered Friday by DuPage Judge Robert E. Byrne.

The lawsuit was filed against the county on behalf of Sundance Homes Inc., a Schaumburg-based builder, as well as others who were assessed impact fees under a state law that later was ruled unconstitutional.

DuPage collects transportation impact fees from builders and developers to help finance road improvements needed to accommodate additional traffic generated by new homes and businesses. Impact fees, which generate about \$3 million a year for county government, long have been controversial in DuPage.

Ruling four years ago in a separate lawsuit, the Illinois Supreme Court upheld a 1989 state law that allowed DuPage and other large counties to impose impact fees. But in the same decision, the high court said an earlier version of the law was invalid and indicated that the fees collected as a result of that law should be refunded.

The earlier lawsuit was filed by the Northern Illinois Home Builders Association and several developers and resulted in the repayment of a portion of the roughly \$6 million in impact fees collected by the county in 1989 and 1990.

In 1996, lawyer Joseph Laraia filed a class-action lawsuit on behalf of Sundance Homes and others, asking for repayment of the entire amount--now more than \$7 million with interest.

Lawyers for the county had argued that Laraia's lawsuit was too late because it was not filed within the five-year statute of limitations.

But the county suffered a critical legal setback when Byrne disagreed and ruled that the time allowed for filing the lawsuit began in 1995 with the Supreme Court's decision.

Byrne also ordered that the \$7 million be placed in escrow.

Partly in response to Byrne's order, County Board members voted in October to reverse an earlier ordinance that would have eliminated impact fees effective Dec. 31, 1999. Instead, the fees were extended another 10 years.

Former County Board Chairman Gayle Franzen had urged that the fees be eliminated, arguing they are a hidden tax and unnecessary after the courts had upheld the county's 4-cents-a-gallon tax on gasoline.

Laraia said he had attempted to negotiate a settlement before the lawsuit was filed and again while the litigation was pending. But in closed-door discussions, sources say, a majority of County Board members rejected the proposals.

During a closed portion of a meeting last Tuesday, board members reportedly opted to take their chances with an appeal.

In approving a final order during a court hearing Friday, Byrne ruled that the county should pay \$2.7 million in refunds and interest to about 330 builders, developers, homeowners and others whose impact-fee payments were documented. Those

with documented claims include about 275 homeowners and about 55 builders, representing more than 2,000 parcels of property.

Laraia's law firm and the firm of lawyer Vincent Di Tommaso will be paid \$1.5 million in legal fees plus interest under the ruling.

Laraia also proposed, and Byrne agreed, that any leftover funds be used to abate county real estate taxes once other claims have paid and appeals have been resolved.

Judges traditionally have some discretion over how funds left over from the settlement of class-action lawsuits are to be used. But generally, such funds are to benefit people or causes similar or related to the issue under litigation. The money sometimes is donated to charity.

In this case, Laraia argued, the beneficiaries should be property owners who pay the estimated \$60 million a year that county government collects in real estate taxes.

By ordering an abatement or reduction in real estate taxes, property owners would share in the relief in proportion to the taxes they pay.

"That's all I want to see, that real estate taxpayers get the money," Laraia said.

Anna Harkins, an assistant state's attorney, contended that an abatement would be cumbersome and argued unsuccessfully that any leftover funds be released for the county to use as it sees fit.

Laraia said afterward that his firm sifted through thousands of pages of county paperwork to identify who paid impact fees in 1989 and 1990. In some cases, the cost of the impact fees was passed on to buyers; in others, the fees were absorbed by the builders.

"We did a lot of things that the county should have been doing," Laraia said.