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Legal Corner

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WATER RIGHTS AND DEVELOPMENT COSTS

Two new higher court cases highlight the problems developers have in managing development costs when it comes to water service.

I. In one case a developer Landmark Development, Inc. was issued a certificate of water availability by the City of Roy for a proposed 50-unit residential development. During the same time, another developer, New Concept Homes, Inc., received a water availability letter from the City for a planned 83-unit residential development. When the City sent the water availability letters to the developers, the City's water connection fee was $350 per unit.

New Concept installed the water system at its development, and the City charged New Concept $350 per connection.

Meanwhile, Landmark moved more slowly, and had not begun construction.

Meanwhile also, the City hired a water consultant, and the City Council passed an ordinance raising the water connection fee to $920 per connection. A month after the City passed the ordinance, Landmark paid the City at $350 per connection. However, the City refused the check.

Landmark sued the City, seeking injunctive relief and over $600,000 in lost profits, attorney's fees, and costs. The Court of Appeals held for the City, and the Washington Supreme Court recently affirmed.

Municipalities are authorized by statute to require property owners to pay a fee to connect to the city's water or sewer system. The statute allows the city to set the fee so that all systems users pay their equitable share of the cost of the system, and requires that connection fees be computed based on the cost of the system.

However, the statute does not address municipal funding sources. In fact, the sources need not be factored into a city's computation of fees. The state legislature, in 1989, determined that water and sewer districts must deduct donations and grants from the cost of the facilities, but municipal districts, such as the City of Roy, need not. Therefore, the City acted properly and legally in computing its water connection costs.

Landmark Development, Inc., v. City of Roy, Wash. Supreme Court, No. 65817-0, July 22, 1999.

II. In another case regarding water service costs, a planned residential development in Mason County sued the County for additional fees imposed by the County on the residents.

Rustlewood, a PUD on Hartstene Island, received sewer and water service from the County. After several years, the County, seeking to remedy a perceived error, imposed a fee on Rustlewood residents to recoup past expenditures for Rustlewood's sewer and water systems that exceeded the fees collected from Rustlewood residents. The residents sued, claiming the fee violated state law.

The County created the problem by co-mingling funds from different county-maintained systems. The Accountancy Act requires that separate accounts must be kept for each public service industry under the jurisdiction of a taxing body. The County did not treat each sewer system as a unique public service industry. Instead, it operated with three subsidiary accounts as a combined fund managed by one department. Simply because the County expended more money on Rustlewood sewer and water systems over time than other systems, did not require a repayment from the Rustlewood account.

Moreover, by state statute, a county may classify customers based on statutory criteria, and the rates must be the same for the same class of customers. In this case, the County placed the residents of Rustlewood and Hartstene Pointe in the same class and charged them the same rate. Therefore, under the statute, the County could not surcharge the Rustlewood residents a higher rate than it charged the Hartstene Pointe residents.

Rustlewood Assn. v. Mason County, Washington Appeals II, No. 22560-3, July 23, 1999.