

Opinion: EDC faces lawsuit over mitigation fees

By Larry Weitzman

A new and different challenge has been brought against El Dorado County's road financing plan, again for failure to follow the law. In this case the Mitigation Fee Act under which the county requires home builders, large, small and singular to pay what are called Traffic Impact Mitigation fees to the county for the issuance of a building permit.

The lawsuit, filed in El Dorado County Superior Court on June 5 demands a refund of the Traffic Impact Mitigation (TIM) fees paid by a homeowner who obtained a building permit to construct a 1,854-square foot house on Fort Jim Road, located in Zone 6 of El Dorado County's TIM Fee program. According to the complaint that was filed, George Sheetz, the plaintiff, claims that he was required to pay \$23,420 in TIM fees, \$2,260 for Highway 50 improvements and \$21,160 for local road improvements.



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Paragraph 10 of the complaint states, "The agency also must determine that both 'the fee's use' and 'the need for the public facility' are reasonably related to 'the type of development project on which the fee is imposed'." The complaint cited this requirement as part of the Mitigation Fee Act section 66001(a).

Paragraph 11 said, "To impose a development fee as the condition of approval for a specific development project, a local agency must determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed'' pursuant to section 66001(b) of the Mitigation Fee Act.

The complaint in paragraph 21 claims that the "county did not make, nor has not ever made, an individual determination that the public impacts of Mr. Sheetz's manufactured house bears any relationship, let alone an essential nexus and rough proportionality, to the need for improvements to state and local roads. Nor can it. Mr. Sheetz's construction of one manufactured house on his property did not cause public impacts that justify imposition of the \$23,420 fee demanded by and paid to the county."

A plaintiff's right to protest the fee and sue for a refund is detailed in Section 66020, which was added to the MFA in 1990. This newer section provides that the county must give notice to the fee payer, in this case, plaintiff Sheetz that he has 90 days to protest the fee and 180 days to file suit for a refund. It appears that the county never gave the statutorily required notice. Plaintiff Sheetz filed a protest, notwithstanding, on Dec. 7, 2016, and the case was filed in the statutory 180-day time period provided by Section 66020.

Section 66020 of the Mitigation Fee Act in paragraph (d)(2) provides that, "Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings." In other words, this matter should be litigated quickly because of the precedence provided by the statute.

A nonprofit group Friends of El Dorado County have joined in the action with Sheetz.

Larry Weitzman is a resident of Rescue.