



Landowners prevail in slope lawsuit

By LYNNETTE HINTZE/Daily Inter Lake

City of Whitefish will appeal decision

Flathead District Judge Ted Lympus for the second time has denied a motion by the city of Whitefish to throw out a lawsuit over construction on slopes greater than 30 percent.

Lympus on Wednesday ruled that in the case of William and Theodora Walton versus the city of Whitefish, the city can't bring up arguments in its post-trial motion that it didn't raise in an earlier motion to dismiss the lawsuit.

The city argued that although the jury found that the city violated the Waltons' right to equal protection and is liable, the legal basis underlying the jury verdict was incorrect.

The city maintained that municipal liability under the law "can only arise where the alleged violation was caused by the official custom or policy of the city's policymakers."

There is no evidence of disparate treatment of similarly situated persons or property, Whitefish maintained. But that contention wasn't part of the city's initial motion for dismissal.

In his latest ruling, Lympus also ordered the city to pay the Waltons \$100,000 in legal fees.

Whitefish City Attorney John Phelps said the City Council a few months ago gave him the go-ahead to appeal Lympus' ruling if it wasn't in the city's favor. The case now heads to the Montana Supreme Court for a final decision.

Meanwhile, the city has issued a building permit to the Waltons and construction will begin soon, according to the Waltons' lawyer, Sean Frampton. He said the building permit complied with the permanent version of the critical-areas ordinance.

The lawsuit began two years ago when the city denied the Waltons' plan to build a home on a 45-degree slope overlooking Whitefish Lake. At the time, the planning director argued that the Waltons could build on a flatter portion of their property and thereby didn't qualify for a "reasonable use" exemption from zoning regulations.

While Lympus initially ruled in favor of the city, saying the city's interim critical-areas ordinance that governed slope construction was constitutional, a jury later decided that the Waltons' right to equal protection of the law had been violated because another developer had been granted reasonable-use exemptions on steep lots.

The jury decision led to a subsequent determination that the Waltons were entitled to \$300,000 in damages.

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