

# Cleveland to appeal Westlake water ruling

Suburb's law director doesn't think case over additional fees will hold up in court

BARB GALBINCEA  
bgalbincea@cleveland.com

WESTLAKE — The city of Cleveland has served notice that it intends to appeal a court ruling last month that blocked additional fees for Westlake water customers.

Cuyahoga Common Pleas Judge Michael Astrab on Feb. 7 granted a preliminary injunction that the suburb had sought to stop Cleveland's Division of Water from imposing additional quarterly charges that ranged from \$291 for Westlake residents up to more than \$5,000 for big commercial users.

Cleveland contended that it was entitled to the extra charges, which were approved by Cleveland City Council in November, because Westlake intended to leave the water system in favor of another water

supplier — possibly Avon Lake.

In a statement Thursday afternoon, Cleveland officials said: "After considering all of our available options to protect the ratepayers in the more than 70 other communities in the Cleveland Water system, we have determined that an appeal of the injunction is necessary and proper to protect those ratepayers."

Cleveland has said the additional charges for Westlake customers would be to recover about \$19 million for rerouting pipes to continue service to neighboring suburbs and for nearly \$40 million that Cleveland says Westlake owes for various infrastructure projects.

Cleveland's lawyers said during five day of hearings in January that the only way to collect that money once Westlake left the system would be

to divide the outstanding costs among the remaining ratepayers.

Westlake has maintained that in exploring other options it is shopping for the best deal for its residents and has not made any decision about leaving Cleveland. Westlake Mayor Dennis Clough has said he would prefer to buy bulk water from both Cleveland and Avon Lake.

Cleveland filed its notice of appeal last week, but as of Thursday afternoon had not yet filed a brief with the 8th Ohio District Court of Appeals.

Astrab, in the strongly worded opinion granting the preliminary injunction, said: "Cleveland is not Standard Oil with Mayor [Frank] Jackson playing the role of John D. Rockefeller. Yes, there are contractual obligations between the two

cities, but Westlake should be permitted to re-evaluate those obligations without fear of potentially crippling economic retribution hanging over the heads of its citizens and business owners."

Both sides have asked Astrab for summary judgment without a trial in the broader case pending before him about Westlake's rights and obligations in its water service agreement with Cleveland.

Westlake Law Director John Wheeler said Thursday that the city does not believe Cleveland has grounds for an appeal and "is looking forward to proceeding before Judge Astrab on the merits of the case."

Clough, Westlake's mayor, said this week that his city was proceeding "at a snail's pace" on exploring other options while the court case is pending.