



***Environmental
Planning
Commission***

***Agenda Number: 2
Project Number: 1011454
Case Number: 17EPC- 40068
Hearing Date: January 11, 2018***

Staff Report

<i>Agent</i>	Bob Keeran or Doug Foster
<i>Applicant</i>	Keeran 1, LLC
<i>Request</i>	Appeal of a denial requesting reimbursement of excess drainage impact fee credits in the NW Service Area and excess road impact fee credits in the Citywide Service Area.
<i>Legal Description</i>	n/a
<i>Location</i>	See request above.
<i>Size</i>	n/a
<i>Existing Zoning</i>	n/a
<i>Proposed Zoning</i>	n/a

Staff Recommendation

***DENIAL of Project # 1011454
Case # 17EPC-40068
based on the
Findings included within this report***

***Staff Planner
Tony Loyd,
Impact Fee Administrator***

Summary of Analysis

The appellant requested cash reimbursement of excess Northwest Drainage and Citywide Road Impact Fee Credits. After consideration, the Impact Fee Administrator denied the request, as all drainage impact fees within the Northwest Service Area and all road impact fees within the Citywide Service Area are encumbered and thus unavailable for cash reimbursement. The decision was based primarily on the definition of "Encumbered" and Sections 14-19-19(J)(7)(c) and 14-19-19(J)(7)(d) of the Impact Fee Ordinance.

Appeal Report

INTRODUCTION

Request

Appeal of a denial requesting reimbursement of excess drainage impact fee credits in the Northwest Service Area and excess road impact fee credits in the Citywide Service Area.

EPC Role

- The EPC's role is to hear this case based on Section 14-19-20 ADMINISTRATIVE APPEALS of the Impact Fee Ordinance. For full text, see Exhibit "A", Impact Fee Ordinance, Section 14-19-20 ADMINISTRATIVE APPEALS.
- This case would be considered a quasi-judicial matter as the EPC's decision would be based on the City's adopted Impact Fee Ordinance.

History/Background/Context

- The subject of the appeal is the denial, by the Impact Fee Administrator, of the appellant's request for reimbursement from the City in the amount of \$399,973.00 for excess drainage impact fee credits in the Northwest Service Area and \$100,367.00 for excess road impact fee credits in the Citywide Service Area. By definition, the holder of excess impact fee credits can request reimbursement from the City for all or part of the amount of excess impact fee credits from revenue generated by impact fees paid by new development for system improvements. However, the city is not obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area. That being said, the appellant did not construct any system improvements in exchange for excess impact fee credits but instead, acquired them through assignment from other credit-holders as approved by the Impact Fee Administrator. As such, the appellant is subject to the same rights and restrictions as the original credit-holder, in addition to additional restrictions that apply to transferred excess credits. For full text, see Exhibit "A" Impact Fee Ordinance, Section 14-19-19 CREDITS under subsection (J) (1) through (6) and (J)(7) (a) through (g).

Applicable Ordinances, Plans and Policies

- Impact Fee Ordinance, Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994, Sections 14-19-1 through 14-19-99 ROA 1994, which is included as Exhibit "A" and can be referred to interchangeably as "Ordinance or IFO".
- Impact Fee Ordinance Section 14-19-3 DEFINITIONS amended to change the definition of ENCUMBERED and as further defined in amended Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance, which is included as Exhibit "B".

- Development Process Manual, Chapter 18, Impact Fees Regulations, which is included as Exhibit “C” and can be referred to interchangeably as “DPM”.
- Capital Implementation Program Financial Status Report for November 2017 included as Exhibit “D”.
- Supporting backup material to Capital Implementation Program Financial Status Report for November 2017 included as Exhibit “E”.

Applicable Definitions

- Definitions can be found in the Impact Fee Ordinance, Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994, Section 14-19-3 ROA 1994, and as amended, see Exhibits “A” and “B”.

BASIS FOR APPEAL/RESPONSE TO APPEAL

The appellant’s grounds for appeal are summarized below, followed by the City’s response in bold and applicable sections within the Ordinance and DPM as provided to the EPC for reference. However, the entire Impact Fee Ordinance and Chapter 18, Impact Fees Regulations, from the Development Process Manual were used to prepare the response to the appeal.

1. Appellant submits the appeal as a provisional appeal only.

There is no rule creating or allowing a “provisional appeal” as presented by the appellant. The rule does not exist in city ordinance, the Development Process Manual or the Rules of Conduct of Business by the Environmental Planning Commission. As such, this matter should be treated as an ordinary appeal of a decision from the Impact Fee Administrator.

2. Appellant has filed suit in the Second Judicial District Court and contends that appellant's request for cash reimbursement of excess impact fee credits is not subject to discretionary action by the Impact Fee Administrator, and this matter is therefore not subject to the city's administrative process.

As of the writing of this report, this matter has not been heard or decided by the Second Judicial District Court and therefore is subject to the city’s administrative process.

3. The appellant contends that drainage impact fees in the Northwest Service Area and road impact fees in the Citywide Service Area are not encumbered and therefore available for reimbursement.

Based on the current definition of “Encumbered” and as further defined in amended Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance, impact fee funds for drainage in the Northwest Service Area and roads in the Citywide Service Area are committed

to specified capital improvements on a specified time schedule which does not exceed seven years from the date of payment of the impact fees, and therefore are unavailable for reimbursement.

See Exhibit “B” for full text of the amended definition of “Encumbered” and amended Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance.

See Capital Implementation Program Financial Status Report Exhibit “D” and supporting backup material Exhibit “E” as highlighted.

4. The decision by the Impact Fee Administrator to deny the appellant’s request for reimbursement of excess drainage credits in the Northwest Service Area and excess road credits in the Citywide Service Area was arbitrary or capricious or otherwise not in accordance with law.

The Impact Fee Administrator’s decision to deny the appellant’s request, was based on applicable sections within the Impact Fee Ordinance, the Development Process Manual Chapter 18, applicable Capital Implementation Program Financial Status Reports and supporting backup material to Capital Implementation Program Financial Status Reports. Therefore, the decision was neither arbitrary or capricious and was in accordance with law.

CONCLUSION

It is the conclusion of the Impact Fees Administrator, based on the Impact Fee Ordinance and Chapter 18 Impact Fees Regulations of the Development Process Manual, that the appellant is not entitled to reimbursement from the City for all or part of the amount of Excess Northwest Drainage and Citywide Road Impact Fee Credits from revenue generated by impact fees paid by new development for system improvements.

FINDINGS, Appeal

Project # 1011454, Case # 17EPC-40068

1. The case is an appeal of a denial, by the Impact Fee Administrator, of the appellant's request for reimbursement from the City in the amount of \$399,973.00 for excess drainage impact fee credits in the Northwest Service Area and \$100,367.00 for excess road impact fee credits in the Citywide Service Area.
2. Section 14-19-20 ADMINISTRATIVE APPEALS of the Impact Fee Ordinance, authorizes the Environmental Planning Commission (EPC) to hear appeals of any determinations regarding impact fees. This case is such an appeal and has been duly filed in accordance with the referenced Ordinance.
3. The Impact Fee Ordinance Section 14-19-19 CREDITS, allow for the granting of impact fee credits for system improvements, provided a project is listed on the Component Capital Improvements Plan (CCIP) as listed in the Ordinance. Additionally, should credit be granted for system improvements which exceed the value of the impact fees otherwise due from development, then that portion may become excess credits as issued by the Impact Fees Administrator.
4. The holder of excess impact fee credits can request reimbursement from the City for all or part of the amount of excess impact fee credits from revenue generated by impact fees paid by new development for system improvements. However, the city is not obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.
5. Based on the current definition of "Encumbered" and as further defined in amended Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance, impact fee funds for drainage in the Northwest Service Area and roads in the Citywide Service Area are committed to specified capital improvements on a specified time schedule which does not exceed seven years from the date of payment of the impact fees, and therefore are unavailable for reimbursement. See Exhibits "D" and "E".

RECOMMENDATION

DENIAL of 17EPC-40068, an appeal of a determination by the Impact Fees Administrator regarding a request for reimbursement of excess Northwest Drainage and Citywide Road Impact Fee Credits based on the preceding Findings.

***Tony Loyd
Impact Fee Administrator***

Notice of Decision cc list:

**Bob Keeran, Keeran 1, LLC, 8830 Keeran Ln. NE, Albuquerque, NM 87122
COA, P.O. Box 1293, Albuquerque, NM 87103
COA, Planning Department, 600 2nd St. NW, Albuquerque, NM 87102**