



**Environmental
Planning
Commission**

**Agenda Number: 6
Project Number: 1011454
Case Number: 17EPC- 40068
Hearing Date: March 8, 2018**

Supplemental Staff Report
(to be read in conjunction with the original Staff report)

Agent	Bob Keeran or Doug Foster
Applicant	Keeran 1, LLC
Request	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.
Legal Description	n/a
Location	See request above.
Size	n/a
Existing Zoning	n/a
Proposed Zoning	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 request was deferred 60 days at the January 11, 2018 EPC Hearing to allow staff to collect more detailed information related to the accounting practices of the Department of Municipal Development's CIP Financial Status Report as of July 31, 2017, which would correspond to and include the time period of the applicant's reimbursement request (i.e. July 12, 2017). Also, to clarify what impact fee funds were encumbered and/or unencumbered as of the date of the applicant's reimbursement request (i.e. July 12, 2017), and if encumbered, what date and what specific project(s).

Heard at the January 11, 2018 EPC Hearing, was the appellant's appeal of the Impact Fee Administrator's denial for cash reimbursement of excess Northwest Drainage and Citywide Road Impact Fee Credits. The Impact Fee Administrator denied the appellant's 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 (supplemental)

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

- Refer to p.1 of the original staff report.

History/Background/Context

- Original report p.1 - 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) as part of the original staff report.
- New/amended - The Impact Fee Administrator used the Department of Municipal Development's CIP Financial Status Report as of July 31, 2017, see Exhibit "F", to determine what impact fee funds were encumbered and/or unencumbered as of the date of the applicant's reimbursement request (i.e. July 12, 2017). This includes the tables titled Impact Fee Reserves for Streets and Storm, see Exhibit "G".
- New/amended - Looking at the CIP Financial Status Report as of July 31, 2017, the encumbered balance for Northwest drainage is \$219,873.00 and the unencumbered balance (also referred to as indirect overhead (IDOH)) is \$4,815.00. The \$4815.00 is calculated by multiplying \$219,873.00 by 0.0219 (IDOH factor) and is needed for all capital projects. However, one needs to look at the unencumbered less indirect balance to determine what would be considered the actual unencumbered balance at the time of the specific CIP Financial Status Report. In this case July 31, 2017. The

balance is zero as a result of the total encumbered and total unencumbered (IDOH) balances of impact fees being expended. Therefore, all Northwest drainage impact fees would be considered reserved or ear-marked. The same exercise, as shown above for Northwest drainage, when applied to Citywide roads, results in an unencumbered less indirect balance of \$0.00 at the time of the July 31, 2017 CIP Financial Status Report. Therefore, all Citywide road impact fees are reserved or ear-marked.

- New/amended - The impact fees are also shown as Reserved and Encumbered by PO per the table titled Impact Fee Reserves for Streets and Storm – Exhibit “G”. To meet the definition of “Encumbered” as defined in the IFO, impact fee funds must be 1) committed for a specified capital improvement, 2) on a specified time schedule, and 3) not exceeding seven years from the date of payment of the impact fees. All of which is illustrated in the table.

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” (original report) and can be referred to interchangeably as “Ordinance or IFO”.
- Revised from the original report to say, Impact Fee Ordinance Section 14-19-3 DEFINITIONS – “ENCUMBERED” with additional language in Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance.
- Development Process Manual, Chapter 18, Impact Fees Regulations, which is included as Exhibit “C” (original report) and can be referred to interchangeably as “DPM”.
- Capital Implementation Program Financial Status Report for July 31, 2017 included as Exhibit “F”.
- Supporting backup material to Capital Implementation Program Financial Status Report for July 31, 2017 included as Exhibit “G”.

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” (original report).

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.

Refer to p.2 of the original staff report (attached).

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.

This matter has been heard by the Second Judicial District Court, which has ruled that the appellant 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.

Revised from the original report to say, based on Section 14-19-3 DEFINITIONS – “ENCUMBERED” with additional language in Section 14-19-19(J)(7)(c) of the IFO, 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 Capital Implementation Program Financial Status Report July 31, 2017 Exhibit “F” and supporting backup material Exhibit “G” 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.

Refer to p.3 of the original staff report (attached).

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 Section 14-19-3 DEFINITIONS – “ENCUMBERED” with additional language in 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 as illustrated in Exhibits “F” and “G”.

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:

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