City Council Introduction: October 18, 2004

Bill Number 04R-284

Public Hearing: October 25, 2004

FACT SHEET

TITLE: Resolution for Impact Fee Appeal with D&A Properties, LLC.

SPONSOR:

OPPONENTS: Public Works & Utilities

OTHER DEPARTMENTS AFFECTED:

STAFF RECOMMENDATION: Denial

APPLICANT: D&A Properties, LLC
Attn: Dawn Robinson

REASON FOR LEGISLATION: Impact Fee Appeal

DISCUSSION

Lincoln Municipal Code §27.82.050(c)(1) provides in pertinent part that "the Impact Fee Administrator shall determine the amount of each required impact fee through the use of impact fee schedules adopted by the City Council." The arterial impact fee was correctly calculated based upon the 2004 Arterial Street Impact Fee Schedule. Appellant is constructing a 8800 square foot building at 8310 Wendell Way for the purpose of a childcare center. According to the Arterial Street Impact Fee Schedule (beginning January 1, 2004, the arterial street impact fee for a daycare center is $2,702 per 1,000 sq. ft. (8,800 x $2,702 ÷ 1,000 = $23,778).

This application does not meet any of the stipulations required for reduction in an impact fee. According to Section 27.82.110 of the Impact Fee Ordinance, the City Council shall not waive fees unless there is a finding that the fee was incorrectly calculated or that there are unusual circumstances which demonstrate that application of the fee for the development would be unfair or unjust. Specifically, economic hardship is not an unusual circumstance of development which demonstrates that application of the fee for the development would be unfair or unjust. Rather, almost every other builder or developer could make this same argument.

The arterial street impact fee for child daycare centers, as well as most other commercial uses are calculated based upon peak hour trip rate generated per square foot of gross floor area pursuant to the Institute of Transportation Engineers (ITE) traffic generation manual. The child care centers trip rate has been calculated based on over 61 traffic count studies nationwide of child care center users.

POLICY OR PROGRAM CHANGE: No

FACT SHEET PREPARED BY: Michaela Kanse Asst. Public Works/Utilities Business Manager

REVIEWED BY: Allan Abbott Director of Public Works/Utilities

Fact Sheet D&A.wpd

IMPACT FEE ADMINISTRATOR REPORT & RECOMMENDATION

IMPACT FEE APPEAL - IFA-004007:

APPELLANT: D&A Properties, LLC
4241 Duxhall Drive
Lincoln, NE 68516

PROPERTY: 8310 Wendall Way
Lincoln, NE 68516

REQUEST: The appellant is appealing from the Arterial Street Impact Fees Determination dated September 20, 2004 arguing that in their preparations in development of this property as a childcare center they did not expect impact fees would be required from a childcare center and that the Arterial Street Impact Fees will cause a significant hardship in preparing to open a childcare center.

RECOMMENDATION: Denial

REASONS:

(1) The arterial impact fee was correctly calculated based upon Arterial Street Impact Fee Schedule. Appellant is constructing a 8800 square foot building at 8310 Wendell Way for the purpose of a childcare center. According to the Arterial Street Impact Fee Schedule (beginning January 1, 2004, the arterial street impact fee for a daycare center is $2,702 per 1,000 sq. ft. (8,800 x $2,702 ÷ 1,000 = $23,778).

(2) This application does not meet any of the stipulations required for reduction in an impact fee. According to Section 27.82.110 of the Impact Fee Ordinance, the City Council shall not waive fees unless there is a finding that the fee was incorrectly calculated or that there are unusual circumstances which demonstrate that application of the fee for the development would be unfair or unjust. Specifically, economic hardship is not an unusual circumstance of development which demonstrates that application of the fee for the development would be unfair or unjust. Rather, almost every other developer could make this same argument.

FACTS:

(1) The Appellant's contractor, StudioNRG, made application on May 20, 2004 stating square footage for the building was 5,800 square feet.

(2) The Impact Fee Determination was made on May 24, 2004, in the amount of $19,421.60. The Arterial Street Impact Fee calculation was based on the 5,800 square feet stated on the May 20, 2004 Impact Fee Application.

1 ½" Water System Impact Fee 1 ½" Water Distribution Impact Fee 1 ½" Wastewater Impact Fee (Water Utilities Impact Fees are based on Water Meter Size)	$ 1,543.33 $ 956.67 $ 1,250.00
Arterial Street Impact Fee (Unit of Measure Square Foot Day Care Facility $2.702 per Square Foot 5,800 sf x $2.702/sf)	$15,671.60

(2) The Appellant contacted the Impact Fee Administrator's office September 15, 2004 inquiring about the amount of the fee and the square footage of the building. After reviewing the plans, it was noted by Impact Fee Administrator that the square footage for the proposed Day Care Center was 8,800 square feet, not 5,800 square feet as noted by the Appellant's contractor, StudioNRG.

(3) The City and Appellant agreed that the building contains 8,800 square feet of gross floor area as defined in Lincoln Municipal Code §27.82.040.

(4) The Impact Fee Determination was corrected on September 20, 2004, and the recalculation was based upon the correct square footage of 8,800. The total amount of Impact Fees due was corrected to $27,527.60.

1 ½" Water System Impact Fee 1 ½" Water Distribution Impact Fee 1 ½" Wastewater Impact Fee (Water Utilities Impact Fees are based on Water Meter Size)	$ 1,543.33 $ 956.67 $ 1,250.00
Arterial Street Impact Fee (Unit of Measure Square Foot Day Care Facility $2.702 per Square Foot 8,800 sf x $2.702/sf)	$23,777.60

DISCUSSION:

The arterial street impact fee for child daycare centers, as well as most other commercial uses are calculated based upon peak hour trip rate generated per square foot of gross floor area pursuant to the ITE traffic generation manual. The child care centers trip rate has been calculated based on over 61 traffic count studies nationwide of child care center users.

The argument that Dawn Robinson, D&A Properties, LLC partners, or StudioNRG were unaware of the amount of Arterial Street Impact Fees is inexcusable. The City of Lincoln Website explains the fee schedule and provides a direct phone number for contacting the Impact Fee Administrator for further questions and clarification. The Impact Fee Administrator has

been, and continues to be, available to provide calculations prior to, during or after submission of an application at Building and Safety.

Dawn Robinson and her professional contract firm, StudioNRG, are responsible for the budgetary projections and submissions for this project. Per Account history with Building and Safety, StudioNRG has experience with Building Permits and Impact Fee applications since the inception of the Impact Fee Ordinance on June 1, 2003. The City cannot be held responsible for these private firm's incorrect projections of impact fee amounts.