

IMPACT FEE ADMINISTRATOR REPORT & RECOMMENDATION

IMPACT FEE APPEAL - IFA-05009:

APPELLANT: Mike A. Adams, President
Adams Enterprises, Inc.
5950 Abigail Drive
Lincoln, NE 68516

PROPERTY: 7420 Otoe Ct

REQUEST: The appellant is appealing from the Impact Fees Determination dated December 13, 2004 arguing that the new construction of a single family dwelling at 7420 Otoe Ct should receive exception to impact fees, or be subject to reduced impact fees because of the location of the new construction in an area developed prior to the adoption of the Impact Fee Ordinance.

RECOMMENDATION:

Denial

REASONS:

- (1) Appellant is constructing a single family dwelling at 7420 Otoe Ct. The impact fee determination was correctly calculated for new construction of a single family dwelling with a 1" water meter.
- (2) The new construction at 7420 Otoe Ct. is ineligible for any and all exemptions from impact fees as outlined in the Impact Fee Ordinance §27.82.060 Exemptions from Impact Fees.

FACTS:

- (1) Impact fees are charges levied against new construction and changes in land use. Impact fees help generate revenue to build new arterial streets, water lines, wastewater lines, and parks needed because of the new construction and changes in land use.
- (2) Mr. Adams states the area around his new construction to be already developed. The fact that the proposed construction has direct access to, or is located close to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that the proposed development will have no impact on the need for Impact Fee Facilities of the type covered by the impact fee.

Prior to June 1, 2002 negotiations took place between developers, builders and the City. These negotiations, based on the different levels of participation by these individuals in the eligible capital costs determined the categorically exempted areas. New construction at property located at 7420 Otoe Ct does not meet this exemption criteria.

DISCUSSION:

Lincoln Municipal Code §27.82.050 (a) provides in pertinent part that “On and after June 2, 2003 and the adoption of the impact fees schedules by resolution of the City Council, any person who applies for a building permit shall pay a water system impact fee, water distribution impact fee, wastewater impact fee, arterial street impact fee, and neighborhood park and trail impact fee unless the type of development described in the permit, or to be engaged in, is specifically exempted, waived or subsidized by this ordinance, or unless the type of development described in the permit is not located in an impact fee benefit district for the above-described impact fees.”

Impact fees are charges levied against new construction and changes in land use. Impact fees help generate revenue to build new arterial streets, water lines, wastewater lines, and parks needed because of the new construction and changes in land use. The fact that the proposed construction has direct access to, or is located close to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that the proposed development will have no impact on the need for Impact Fee Facilities of the type covered by the impact fee.

Lincoln Municipal Code §27.82.060 (b) (1) provides in pertinent part that “Development, pursuant to a written agreement or other approval between the City and a developer which was entered into prior to June 1, 2002, and which specifically included or required the participation by the developer in the financing or construction of the Impact Fee Facilities for the approved development shall be exempt from the impact fee charged for those specific types of Impact Fee Facilities the developer agreed to finance or construct in whole or in part.”

Prior to June 1, 2002 negotiations took place between developers, builders and the City. These negotiations, based on the different levels of participation by these individuals in the eligible capital costs determined the categorically exempted areas. New construction at property located at 7420 Otoe Ct does not meet this exemption criteria.

The new construction at the property located at 7420 Otoe Ct does not meet the any of the exemption criteria requirements outlined in the Lincoln Municipal Code §27.82.060 Exemptions From Impact Fees.

IMPACT FEE NOTICE OF APPEAL

This appeal must be filed with the City Clerk within 10 days after the date of the determination for which the appeal is being filed. Although the fees may be reduced via this appeal process, the fees may NOT be waived using the appeal process. A City Council determination shall be final

Appeal of Impact Fee Determination for Property Located at: <u>7420 Otoe Ct.</u>	FILED CITY CLERK'S OFFICE 2004 DEC 23 P 4:15 CITY OF LINCOLN NEBRASKA
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Date: 12/22/04

Building Permit Application No. B0402286

At the next regular City Council meeting following the filing of the appeal the Council will schedule a time and place for hearing the appeal. The City Clerk shall mail notice of the hearing to the party at the address given below.

5950 Abigail Dr. Lincoln 68516

The following party alleges a grievance related to Impact Fees:

Name: Mike A. Adams

Company (if Applicable): Adams Enterprises Inc.

Address: 5950 Abigail Dr.

City, State, Zip: Lincoln, NE 68516

Phone: 402-525-8158

Email Address: madams@adamsenterprisesinc.com

fax-486-0873

Written Explanation of why the party feels a Determination was in Error: Attach written explanation of why the appellant feels that a determination was in error.

See attached

Final Determination by Council on _____ Day of _____, 20____
Resolution No. _____

Copy to MH/PW/PJ
12/27

Adams Enterprises Inc.

December 22, 2004

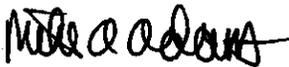
Dear City Council Representatives:

This letter is a brief explanation as to why I feel I was charged the maximum impact fee allowed by law in error on a new home being constructed at 7420 Otoe Ct. in Lincoln, aka Fox Hollow Add. Block 3 Lot 10. I understand that your time is valuable, so I will highlight on a few key points in my argument:

- The council has determined that some areas in Lincoln may be except to impact fees or subject to reduced impact fees.
- Most of these areas are in developments on lots which were completed before the impact fees were initiated.
- This particular area, Fox Hollow Addition, has been developed and finished since the 1970's.
- Using this logic, this home should also either be except to impact fees, or subject it to reduced impact fees.

Thank you for taking the time to review this appeal request. If you have any further questions please call me at (402) 525-8158.

Sincerely,



Mike A. Adams
President
Adams Enterprises Inc.
dba Town & Country Homes



5950 Abigail Dr.
Lincoln, Nebraska 68516
Phone: 402-525-8158
Fax: 402-486-0873

TO: City Council Members

FROM: Michaela Hansen

RE: Additional information for the Adams Enterprises Appeal

Attached is Clancy Mullen testimony done for the Impact Fee Study for Duncan and Associates. His testimony discusses the consumption based methodology which relates to the Adams Appeal.

Clarence Muller

~~shows that the City's impact fees satisfy the first part of that dual test.~~ He states in his affidavit (E42, 4-8-9, 21, Vol. II) that:

I am aware that the "Impact Fee Ordinance" has been criticized based upon the belief that the impact fees imposed will not result in a direct benefit to the developer. Critics of the Impact Fee Ordinance point out that in some instances the Impact Fee Facility Improvements funded by the impact fees will not abut or be located near to the new development that paid the fee. For instance, in many areas of the City, new development will be for construction of a single-family dwelling on one of the last remaining lots within a previously approved subdivision. In many instances, this subdivision will already have arterial streets, water system, water distribution, wastewater, and neighborhood parks and trail impact fee facility improvements abutting or near the lot to be developed.

Therefore, it is likely that impact fees imposed on development of this lot will be spent on eligible impact fee facilities or impact fee facility improvements (as defined in the "Impact Fee Ordinance") located further away from the lot.

However, despite the fact that there is no need to construct impact fee facility improvements generally abutting the development of this lot, the development does in fact receive a direct benefit in exchange for payment of the impact fees.

Based upon my education, work experience and familiarity with generally accepted methods of impact fee analysis supporting impact fees, I am of the opinion that under this example, the single-family dwelling would receive a direct benefit (or alleviate a burden) in exchange for payment of the arterial street impact

fee, water distribution impact fee, water system impact fee, wastewater impact fee, and neighborhood park and trail impact fee.

... Specifically, for arterial streets, that benefit is the assurance the new development will be accommodated without decreasing current standards by the provision of the continued availability and maintenance of a consistent and adequate level of service on the arterial street system through the replacement of the service units of street capacity consumed by that single-family dwelling. . . . The "consumption-based" methodology simply charges a new development the cost of replacing the capacity that it consumes on the arterial street system. That is, for every service unit of traffic generated by the development, the arterial street impact fee charges a net cost to construct an additional service unit of capacity. Implicitly, the level of service used in a consumption-based impact fee is a one-to-one ratio of capacity to demand in the arterial street system as a whole. As long as the current system provides at least this capacity/demand ratio, the impact fees are not charging for a higher level of service. . . . Since arterial streets function as an integrated system that moves traffic from one part of the community to another, it is immaterial as to which arterial streets are improved by the use of the impact fees received from the development of the single-family dwelling in this example. The fees are used to replace the capacity consumed by the development, and thus to maintain the existing level of service, which in turn benefits the new dwelling unit by keeping the arterial street level of service from deteriorating due to increased traffic. The analysis used to calculate the arterial street impact fee is set

out more fully in the "Lincoln Impact Fee Study" on pages 3 through 19, inclusive.

... Similar criticisms have been made with respect to the water distribution water system, wastewater, and neighborhood park and trail impact fees. In addition, critics of the "Impact Fee Ordinance" further object to the water system and wastewater impact fees, arguing that since the fees may be spent citywide, there is no direct benefit to the developer who pays the fee. Again, this type of criticism misunderstands or ignores the consumption-based methodology used in calculating the City of Lincoln's impact fee. Here again, the single-family dwelling example used above will receive a benefit in exchange for payment of the impact fees. That benefit is the use of the system of facilities without suffering the degradation of the level of service that would be experienced in the absence of the improvements funded by the impact fee payment. The impact fees represent the amount that must be spent, along with other grants and capital revenues that will accompany growth, to maintain the existing level of service. Payment of the impact fee by the new home will enable the City to fund improvements needed to maintain the level of service in the system of facilities that will be impacted by the increased service demands resulting from the new development. The occupants of the home will directly benefit from the maintenance of the level of service, regardless of whether the improvement funded by the fee payment is located immediately adjacent to the development. The description of that benefit and the analysis and methodology utilized in calculating the water distribution, water system, wastewater and neighborhood

park and trail impact fees are set forth more particularly in the "Lincoln Impact Fee Study."

The rough proportionality second part of the test is met as the money generated is less than the cost of meeting the needs brought about by new development. For example, in the Impact Fee Study the maximum impact fee for arterial streets for a single-family home was determined to be \$3,212. (E42, 17:9, 21, Vol. II). By comparison, Resolution No. A-81905 adopted by the City Council on January 13, 2003, established an arterial street impact fee of \$1,225 for a single-family dwelling. (E40, 68:9, 15, Vol. II). Rough proportionality is further assured as formula for calculating the amount of the fee is not rigid and inflexible. See Lincoln Municipal Code §27.82.050(d) (E40, 101-102:15, Vol. II) which allows the person improving land to determine his fair share by furnishing his own independent study of traffic and economic data in order to demonstrate that his share is less than the amount under the formula of the ordinance.

Home Builders attempt to sidestep the concept of impact fees as a valid user/service charge by arguing that such charges are already being collected by the City in the form of connection and tap fees and utility rates for water and sewer. However, the fact that some fees are presently being collected does not prohibit the imposition of an additional fee against a class of users who establish a need for additional water and sewer improvements provided the fee does not exceed the benefit received by the user.

CONCLUSION

In conclusion, it does not matter whether impact fees are characterized as a regulatory fee, a service charge, or monetary exaction, the test in each instance is substantially the same. When viewed as a regulatory fee, impact fees are valid as they do not exceed the cost of regulation. That is, revenue from regulatory fees is not limited to just recovering the cost of inspection or