

**CITY OF OLYMPIA
OLYMPIA HEARING EXAMINER
STAFF REPORT
August 17, 2018**

Case: Secure-It Self Storage Impact Fee Appeal, Case No. 17-2150

Appellant: Douglass Properties II, LLC/Lancze G. Douglass
2425 Black Lake Boulevard
Olympia, Washington 98512

Representative: Michael J. Murphy & William J. Crittenden

Project Location: 2225 Cooper Pt Rd SW

Public Notification: Notice of the public hearing was mailed to parties of record and recognized neighborhood associations on August 3, 2018.

I. INTRODUCTION

Project Description and Context

Secure-It Self Storage is a project consisting of eight buildings (7 self-storage and 1 office) occupying 151,960 square feet on a 12.7-acre site. The site is located in west Olympia at 2225 Cooper Point Road SW and Auto Mall Drive SW. The City of Olympia Community Planning & Development Department (CP&D) granted Land Use Approval on September 6, 2016 (Attachment 5).

The appellant has appealed an administrative determination by CP&D that the transportation impact fee for Building 2 has been calculated incorrectly in accordance with the Transportation Impact Fee Rate Schedule. The determination was issued on March 2, 2018 with a fourteen (14) day appeal period. The Appellant filed the appeal of the determination on March 16, 2018.

Background Information

Pursuant to Olympia Municipal Code (OMC) 15.04.040, impact fees are determined at the time a complete building permit application is submitted for each unit in the development, using either the impact fee schedules in effect or an independent fee calculation, at the election of the applicant and pursuant to the requirements set forth in OMC 15.04.050.

The appellant filed building permit applications with the City on December 20, 2016 for Building 1 and for Buildings 3 through 7. A building permit application was then filed for the administrative office building on February 22, 2017. On May 24, 2017, the appellant filed the building permit application for Building 2.

The applicant did not submit an independent fee calculation pursuant to OMC 15.04.050 and thus elected to have his transportation impact fees calculated under the schedules adopted by code in OMC 15.16.040. See OMC 15.04.050(C). The fees adopted in Schedule D are to be applied unless otherwise provided for by the code provisions allowing use of an independent fee calculation, OMC 15.04.050-.070. See OMC 15.08.050(A).

CP&D completed Impact Fee Worksheets for each proposed building during the building permit application review process. The same mini warehouse land use category was used for all the buildings. Since the building permit applications for Buildings 1, 3, 4, 5, 6 and 7 were submitted to the City in 2016, the 2016 impact fee rate

of \$1.29 per square foot of gross floor area for a mini warehouse was applied as set forth in Schedule D adopted in OMC 15.16.040. These fees have been paid in full by the appellant. Building permit applications for Building 2 and the office building were charged the 2017 rate of \$1.33 per square foot of gross floor area (\$1.32 + \$0.01 administrative fee) for a mini warehouse pursuant to the amended Schedule D as adopted in OMC 15.16.040. Ordinance 7052 adopting the rates applicable in 2017 is provided as Attachment 13. The administrative fee was added to the impact fee assessments starting in 2017. Impact fee rates are set forth in Olympia Municipal Code (OMC) Chapter 15.16 and are also listed in impact fee rate sheets provided to the public (Attachment 9).

The appellant paid the transportation impact fee for the office building at the time of permit issuance. For Building 2, the appellant paid only the transportation impact administrative fee when the building permit was issued on January 31, 2018 and requested a deferral form to defer payment until prior to final building inspection as per OMC 15.04.040.H. The appellant then opted to pay the impact fee and submitted payment, without protest, to the City on February 8, 2018. On February 16, 2018, the appellant submitted a Request for Director's Review of Impact Fees for Building 2 (Attachment 2). This request was made in accordance with OMC 15.04.090.C. Following the City's response (Attachment 3), the appellant filed the subject appeal (Attachment 4).

Building size and impact fee payment information for the project are summarized as follows:

Building	Size/Sq. Ft.	Land Use	Unit of Measure	Fee	Total Paid
1	2,880	Mini Warehouse	Sq ft/GFA	\$1.29	\$3,715.20
2	126,000	Mini Warehouse	Sq ft/GFA	\$1.33	\$167,580.00
3	4,800	Mini Warehouse	Sq ft/GFA	\$1.29	\$6,192.00
4	4,800	Mini Warehouse	Sq ft/GFA	\$1.29	\$6,192.00
5	4,800	Mini Warehouse	Sq ft/GFA	\$1.29	\$6,192.00
6	4,800	Mini Warehouse	Sq ft/GFA	\$1.29	\$6,192.00
7	2,880	Mini Warehouse	Sq ft/GFA	\$1.29	\$3,715.20
Office	1,000	Mini Warehouse	Sq ft/GFA	\$1.33	\$1,330.00

Applicable Regulations

Regulations applicable to this proposal include:

- Title 15, Impact Fees – The City of Olympia Impact Fee Ordinance
- OMC 15.04 – General Provisions Governing the Assessment of Impact Fees
- OMC 15.08 – Impact Fees (Parks, Schools, Transportation)
- OMC 15.16 – Appendix A, Impact Fee Schedules (Parks, Schools, Transportation)
- OMC 18.75 – Appeals/Reconsideration
- OMC 18.82 – Hearing Examiner

II. STAFF ANALYSIS

The burden of proof and standards for granting an appeal are set forth in OMC 18.75.040.F:

Standard of Review. In reviewing a decision including a recommendation of the Design Review Board, the Examiner shall give substantial weight to the recommendation of the Board. With regard to decisions of city staff, the Examiner shall accord due deference to the expertise and experience of the staff rendering such decision. The Examiner shall only grant the relief requested by an appellant upon finding that the appellant has established that:

1. *the staff engaged in unlawful procedures or failed to follow a prescribed procedure;*
2. *the staff's decision was an erroneous interpretation of the law;*
3. *the decision is not supported by substantial evidence within the context of the whole record;*
4. *the decision is a clearly erroneous application of the law to the facts;*
5. *the decision is outside the authority or jurisdiction of the decision-maker;*
6. *the decision violates the constitutional rights of the party seeking relief; or*
7. *the decision is clearly in conflict with the City's adopted plans, policies or ordinances.*

Basis of Appeal

1. Item 1 of the Appeal statement claims the appellant is being harmed by the City's decision as follows:

- **If the decision is not corrected, the appellant will be forced to pay an excessive and unsupportable transportation impact fee.**

Staff Response:

The appellant has not contested their payment of the impact fees for the other seven buildings in the development. Impact fees for these buildings were calculated using the same legislatively prescribed formula.

The Olympia City Council adopted OMC Title 15 (Impact Fees) pursuant to RCW 82.02.050 - .090 through a legislative process. The City Council updates the schedule annually to consider adjustments to the fees to account for system improvement cost changes.

The City collects impact fees for transportation, school and park facilities. The City has conducted extensive studies documenting the procedures for measuring the impact of new developments on public facilities, including a transportation impact fee rate study that is periodically updated (Attachments 10 & 11). The studies provide the formula for the Transportation Impact Fee Schedule in Schedule D of OMC 15.16.040.

2. Item 2 of the Appeal states how and why the appellant believed the city staff erred in making its decision:

- **The selection of gross floor area (GFA) as the variable that determines trip generation is not supported by substantial evidence;**
- **The length of trip adjustment factor has no rational basis; and**
- **The excessive and unsupportable fee violates appellant's substantive due process rights.**

Staff Response:

Staff correctly calculated the transportation impact fee for Building 2. The Transportation Impact Fee Rate Schedule in Schedule D has a land use category for mini warehouse. The unit of measure for a mini warehouse is square feet per gross floor area. A note below the chart states that for uses with unit of measure in "sq ft/GFA", impact fee is dollars per square foot. This same calculation was used for the other 7 buildings in the development. The applicant paid those impact fees and did not contend that staff erred in making those decisions. The applicant does not contend that his development is properly classified as a "mini-warehouse" under the adopted transportation impact fee schedule.

In the absence of an independent fee calculation, the applicant's fee is required to be assessed as per Schedule D in OMC 15.16.030. The applicable unit of measure is established as "sq ft / GFA", so the impact fee is dollars per square foot. The applicable rate under Schedule D is \$1.33. Since Building 2 has a total of 126,000 square feet, the required transportation impact fee under Schedule D is \$167,580.

The City Council adopted Schedule D based on a formula for calculating the transportation impact fee which is set forth in Table 3, Components of Impact Fee Schedule on page 10 of the 2016 Transportation Impact Fee Update (Attachment 11). The table identifies a unit of measure as SF GFA and the trip length as 5.1.

The use of gross floor area as a variable is supported by the ITE Trip Generation manual (9th Ed., Land Use Code 151 page 223). A chart from the manual is provided in Attachment 12 that identifies common trip generation rates (PM peak hour). For a mini warehouse, the Unit of Measure is 1,000 square feet, and the Trips per Unit Measure is 0.26.

The length of trip adjustment is described in the 1995 Transportation Impact Fee Rate Study (p. 17) and the 2016 Transportation Impact Fee Update (p. 16). This adjustment represents an average for all new trips generated within Olympia. Being an average, there will be certain land uses that generate trips of different lengths. Trip length data were estimated using limited national survey results.

Application of the components to the impact fee formula for Building 2 is shown below:

*PM Peak 0.26 trips /1000 sq. ft. * 100% new trips * 5.1 miles/3 miles * \$2999 average cost per trip in 2017 = \$1.33 per sq. ft. GFA * 126,000 sq. ft. GFA = **\$167,580**. (Note: this includes the administrative fee of \$1,260.00 + \$166,320.00, per the invoice in Attachment 8).*

Substantive Due Process Rights:

The three-part due process reasonableness inquiry asks '(1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the landowner.' *Guimont v. Clarke*, 121 Wash.2d 586, 609, 854 P.2d 1121 (2009), quoting *Presbytery v. Seattle*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990). If the regulation fails to pass muster under any one of these factors, it will be struck down as violative of due process, and the remedy is invalidation of the regulation. *Presbytery*, at 331–32.

To determine if a statute is unduly oppressive by examining a number of nonexclusive factors to weigh the fairness of the burden being placed on the property owner:

On the public's side, the seriousness of the public problem, the extent to which the owner's land contributes to it, the degree to which the proposed regulation solves it and the feasibility of less oppressive solutions would all be relevant. On the owner's side, the amount and percentage of value loss, the extent of remaining uses, past, present and future uses, temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation and how feasible it is for the owner to alter present or currently planned uses.

Presbytery, 114 Wash.2d at 331,

Olympia's impact fee ordinance has already been determined to be "*proportionate to and reasonably related to the jurisdiction-wide need for new transportation improvements created by that development.*" *City of Olympia v. Drebeck*, 156 Wn.2d 289, 305, 126 P.3d 802, 809 (2006). This includes use of the average trip length that closely matches the City's relatively compact geography such that "in most cases an average trip would traverse a good portion of the City boundaries." *Drebeck*, 156 Wn.2d at 306. Thus, the Supreme Court has upheld the methodology by which Olympia's formula was established as rational and faithful to the mandates of RCW 82.02.050-.090. The Supreme Court expressly held:

We hold that the City's method for calculating transportation impact fees complied with the plain language of the GMA impact fee statutes.

Drebick, 156 Wn.2d at 309.

Because the City's methodology is reasonably related to the jurisdiction wide need to pay for necessary improvements that are related to new growth throughout the City, and because the Council complied with the statutory requirements for adopting a reasonable method of calculating such fees, it complies with the first two prongs of the *Presbytery* test. The appellant provides no meaningful analysis of the *Presbytery* substantive due process test and does not support its conclusory allegation that the resulting fee is "unduly oppressive". Instead, they recite the conclusion that the City fee is "excessive" and therefore "unduly oppressive". No basis is provided to support this argument. Their arguments that the analysis used by the City's consultants in establishing the formula adopted in Schedule D is flawed should have been directed to the City Council. Instead, the Council has adopted a reasonable schedule which the City is required to use when the applicant does not prepare an independent fee calculation.

3. Item 3 asks the appellant, if successful on appeal, to describe the action they wish the Hearing Examiner to take and how this action would eliminate or reduce harm to the appellant:
 - **Reduce the transportation impact fee to a supportable amount:**
 - **Base trip generation on number of storage units, not gross floor area of entire building; and**
 - **Eliminate unsupportable trip length adjustment factor that arbitrarily increases per trip fee by 69%.**

Staff Response:

Staff correctly calculated the transportation impact fee for Building 2 pursuant to the Transportation Impact Fee Rate Schedule in Schedule D.

Appellant's proposed remedy would essentially rewrite the impact fee ordinance, substituting the appellant's preferred formula for the schedule adopted by the City Council pursuant to the authority provided by RCW 82.02.050-.090. Appellant cites no authority allowing for such relief. The enabling statutes authorize the City to impose a system of impact fees by ordinance. RCW 82.02.050(1)(b). Such an ordinance must include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. Olympia adopted such a schedule for transportation impact fees in OMC 15.16.040. Nothing in Olympia's code authorizes the Hearing Examiner to rewrite this schedule, especially where the applicant has failed to conduct an independent fee calculation as allowed by OMC 15.04.050.

III. CONCLUSION

The rate schedule, codified in OMC Title 15 and the transportation impact fee rate studies have been approved by the City Council and provide the components and formula for calculating impact fees for new development. Staff did not err in applying the Transportation Rate Schedule to Building 2.

IV. RECOMMENDATION

Uphold the administrative decision of the CP&D Director that the transportation impact fee for Building 2 was calculated correctly.

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Date Issued: July 20, 2018

V. ATTACHMENTS

2. Request for Director's Review of Impact Fee
3. Director's Administrative Determination
4. Appeal Application
5. Project Land Use Approval
6. Project Site Plan
7. Impact Fee Worksheets
8. Building Permit Invoices
9. Impact Fee Rate Sheets for 2016 and 2017
10. 1995 Transportation Impact Fee Rate Study
11. 2016 Transportation Impact Fee Update
12. ITE Trip Generation Rates
13. Ordinance 7052, 2017 Impact Fee Rate Schedule