

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE: ) HEARING NO. 17-2150  
DOUGLASS PROPERTIES II, LLC, )  
Appellant. ) FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION DENYING APPEAL

**APPLICANT/APPELLANT:** Douglass Properties II, LLC  
1402 E. Magnesium Road  
Spokane, Washington 99217

**REPRESENTATIVES:** William John Crittenden  
Groff, Murphy, PLLC  
300 E. Pine  
Seattle, Washington 98122

Jeffrey Myers, Special Counsel for City of Olympia  
P. O. Box 11880  
Olympia, Washington 98508

**PROJECT LOCATION:** 2225 Cooper Point Road S.W. #2 Building

**SUMMARY OF REQUEST:**

Applicant/Appellant has appealed the Transportation Impact Fee imposed on Building #2 of a seven-building mini warehouse facility at 2225 Cooper Point Road S.W. and Auto Mall Drive S.W.

**SUMMARY OF DECISION:**

The Transportation Impact Fee was correctly calculated in accordance with the Transportation Impact Fee Ordinance. The appeal is therefore **denied**.

**BACKGROUND**

On December 20, 2016, the Applicant/Appellant, Douglass Properties II, LLC ("Douglass") filed building permit applications with the City for Building #1 and Buildings #3 through #7 of a proposed mini warehouse (self storage) facility in West Olympia. On February 22, 2017, Douglass submitted a permit application for the project's administrative office. Then, on May 24, 2017, Douglass filed a building permit application for Building #2. Building #2 is by far the largest of the seven storage structures comprising this mini warehouse facility.

*Findings of Fact, Conclusions of Law  
and Decision Denying Appeal - 1*

**CITY OF OLYMPIA HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

1 Transportation Impact Fees for Buildings #1 and #3 through #7 were calculated  
2 according to the 2016 impact fee rate of \$1.29 per square feet of gross floor area, as set forth in  
3 "Schedule D" adopted under Olympia Municipal Code (OMC) 15.16.040. These impact fees  
4 were paid by Douglass without protest. Traffic impact fees for Building #2 were calculated  
5 according to the slightly higher 2017 rate of \$1.33 per square feet. As Building #2 contains  
6 126,000 square feet, this resulted in a Transportation Impact Fee of \$167,580 for Building #2.

7 Consistent with RCW 82.02.060(4), the City allows applicants the opportunity to submit  
8 an independent fee analysis to provide evidence that the impact fee established by Schedule D is  
9 excessive under the specific circumstances of the project. OMC 15.04.050. Douglass chose not  
10 to submit an independent fee analysis. Instead, on February 5, 2018, Douglass paid the  
11 Transportation Impact Fee for Building #2 under protest and then timely appealed the fee.

12 On appeal Douglass argues that:

13 1. Despite Douglass not having asked the City to undertake an independent fee  
14 analysis, the City's Director should have, on his own initiative, undertaken an independent fee  
15 calculation.

16 2. Several variables contained in Schedule D are calculated in error:

17 a. The selection of Gross Floor Area (GFA) as the unit of measure is in error,  
18 and the proper unit of measure is the number of storage units;

19 b. The reliance on .26 PM trips per unit of measure is in error and should be  
20 reduced to .17;

21 c. The determination that all trips to the facility are "new trips" is in error  
22 and should be reduced;

23 d. The length of the trip adjustment factor is not well supported and should  
24 be eliminated; and  
25

1 e. Overall, the Transportation Impact Fee is excessive and violates  
2 substantive due process rights.

3 3. On appeal the Hearing Examiner has independent authority to determine an  
4 appropriate Transportation Impact Fee even though the Applicant did not present an independent  
5 fee analysis to the City during building permit review.

6 At the conclusion of the hearing Douglass argued that the Transportation Impact Fee  
7 should be reduced to \$48,179.93.

### 8 HEARING

9 The hearing on Douglass's appeal was held on August 17, 2018, in the City Council  
10 Chambers in City Hall. The Applicant appeared through its owner, Lancze Douglass, and was  
11 represented by William Crittenden. The City appeared through Tim Smith, Principal Planner,  
12 and was represented by Jeffrey Myers, Special Counsel.

13 Pursuant to an earlier Pre-Hearing Order both parties submitted briefing, witness lists and  
14 intended exhibits prior to the hearing. The City submitted its Staff Report with eleven  
15 attachments (Exhibit 1). Douglass submitted 24 exhibits, admitted as Exhibits A-1 through  
16 A-24. The only other exhibit submitted during the hearing was a copy of the 2001 Thurston  
17 County Superior Court Decision in *Olympia v. Drebeck*, Case No. 00-2-021522-3, including the  
18 trial judge's accompanying letter. These additional documents are collectively admitted as  
19 Exhibit 2.

20 The City presented the testimony of Tim Smith, its Principal Planner and author of the  
21 Staff Report, and Don Samdahl, a consulting Transportation Engineer involved with the City's  
22 Transportation Impact Fee since its inception in 1995. Douglass presented the testimony of its  
23 owner, Mr. Lancze Douglass, and Todd Whipple, consulting Traffic Engineer. All testimony  
24 was taken under oath.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

**A. Findings Relating to the City's Enactment of the Transportation Impact Fee.**

1. The Growth Management Act (GMA), Chapter 36.70A, empowers Olympia and

2. Olympia initially implemented a Transportation Impact Fee program in 1995. It was updated in 1998, 2002, 2006, and 2009. (Staff Report)

a. OMC 15.04.040 establishes Transportation Impact Fees to be calculated in accordance with either the schedule found in OMC Chapter 15.16 (Schedule D) or through an independent fee calculation as provided for in OMC 15.04.050.

c. OMC 15.04.050(a) allows the director to prepare an independent fee calculation if the director in his/her judgment, finds that none of the fee categories or fee amounts found in Chapter 15.16 accurately describe or capture the impacts of the proposed development.

*Findings of Fact, Conclusions of Law  
and Decision Denying Appeal - 4*

**CITY OF OLYMPIA HEARING EXAMINER**  
**299 N.W. CENTER ST. / P.O. BOX 939**  
**CHEHALIS, WASHINGTON 98532**  
**Phone: 360-748-3386/Fax: 748-3387**

1 applicant may prepare and submit his/her own independent fee calculation, or may request the  
2 City prepare an independent fee calculation. The applicant must make the election between fees  
3 calculated under the schedules or an independent fee calculation prior to issuance of the building  
4 permit for the development. If the applicant elects to prepare its own independent fee  
5 calculation, the applicant must submit documentation showing the basis upon which the  
6 independent fee calculation was made.

7 e. OMC 15.04.050(e) requires that any applicant providing its own  
8 independent fee calculation shall pay the City a fee of \$500 plus the City's actual costs incurred  
9 in reviewing the application.

10 f. OMC 15.04.050(f) recognizes that while the calculations relied upon by  
11 the City in its schedules are presumed valid, the director is to exercise good faith in reviewing  
12 any information provided by the applicant challenging the accuracy of the calculations and, if  
13 warranted, adjust the impact fees on a case by case basis "based on the independent fee  
14 calculation, the specific characteristics of the development, and/or principles of fairness."

15 g. OMC 15.08.050 acknowledges that the Transportation Impact Fees in  
16 Schedule D (OMC 15.16.040), are generated from the formula for calculating impacts fees set  
17 forth in the Transportation Study. These fees are to be reviewed annually to consider  
18 adjustments to account for system improvement cost increases.

19 h. OMC 15.16.040, more commonly referred to as "Schedule D", sets forth  
20 the Transportation Impact Fee Rate Schedule for each land use. Schedule D also identifies the  
21 unit of measure and rate for each land use. For example, the unit of measure for mini  
22 warehouses is square feet of Gross Floor Area and the rate is \$1.33 per square foot (including a  
23 .02 administrative fee). This means that a mini warehouse project having its Transportation  
24 Impact Fee calculated under Schedule D will be imposed a Transportation Impact Fee of \$1.33  
25 per square foot of Gross Floor Area (in 2016 the fee was \$1.29 per square foot).

1           4.     The Transportation Impact Fee of \$1.33 for mini warehouses is based upon a  
2 formula explained more fully in the Transportation Impact Fee Update dated November 2016  
3 (Attachment 11 to the City Staff Report). This fee begins with the calculation that the cost to the  
4 City of projected transportation improvements resulting solely from new traffic trips is  
5 \$18,590,836. The study anticipates 6,241 new PM Peak Hour trips from new development,  
6 resulting in a cost to the City of \$2,979 per each new PM Peak Hour trip. The City also imposes  
7 an administrative fee of \$20 per new trip, resulting in a total cost per new trip of \$2,999.

8           5.     Based upon this calculated cost of \$2,999 per new PM Peak trip, the specific  
9 impact fee for each land use is then calculated based upon several variables found in Table 3 of  
10 the Transportation Impact Fee Update. These variables include:

- 11           a.     An adjustment for the number of PM Peak trips per unit of measure;
- 12           b.     The number of trips that are "new trips"; and
- 13           c.     An adjustment for the anticipated length of each trip, with 3.0 miles being  
14 the standard trip length.

15           6.     Olympia calculates that for every 1,000 square feet of new mini warehouse .26 of  
16 a PM Peak trip will be generated. This number is derived from the ITE Trip Generation Manual,  
17 9th Edition.

18           7.     Olympia calculates that each trip to a mini warehouse during the PM Peak Hour  
19 will be a "new trip", that is, a trip specifically related to the mini warehouse and not a "pass by"  
20 trip where the traveler merely stops in at the facility while traveling along the road to  
21 somewhere else. This is again based upon the ITE Trip Generation Manual.

22           8.     Olympia calculates that on average each new PM Peak trip to a mini warehouse  
23 will be 5.1 miles in length, or 1.7 times the standard trip length of 3.0 miles. This trip adjustment  
24 calculation was originally established by the City in 1995. This calculation was based upon then  
25

1 available studies for warehouses in general as there were no separate studies for mini  
2 warehouses. The trip adjustment variable has remained unchanged since 1995.

3 9. The current Transportation Impact Fee of \$1.33 is therefore based upon the  
4 following calculations: The number of thousands of square feet (126) times PM Peak trips per  
5 thousand square feet (.26) times number of trips that are new trips (100%) times standard length  
6 of trip compared to average trip length of 3.0 miles (1.7) times cost of each new trip (\$2,999).  
7 Stated numerically for Douglass's Building #2, this translates to  $126 \times .26 \times 1.00 \times 1.7 \times \$2,999$   
8  $= \$167,020$ .

9 10. All of these variables are then converted to a simple fee per square foot, resulting  
10 in a slightly different, final impact fee amount. For mini warehouses the Transportation Impact  
11 Fee per square foot is \$1.33. The calculation for this fee is  $\$2,999 \div 1,000 \times .26 \times 1.7 = \$1.33$ .  
12 Applied to Building #2, this fee produces a final Transportation Impact Fee of  $\$126,000 \times \$1.33$   
13  $= \$167,580$ . This is the Transportation Impact Fee imposed by the City on Douglass's Building  
14 #2.

15 11. Olympia's Transportation Impact Fee methodology was analyzed by our State  
16 Supreme Court in *City of Olympia v. Drebeck*, 136 Wn.2d 289, 126 P.3rd 802 (2006). In  
17 *Drebeck* the Court noted that the City's then Hearing Examiner had examined each of the  
18 components of the Transportation Impact Fee and found them to be correctly calculated, and that  
19 the fee is proportionate to and reasonably related to the demand for new capacity improvements  
20 considered as a whole, and that those improvements considered as a whole will benefit the  
21 Drebeck development. "The Hearing Examiner thus found that the City's method for calculating  
22 Transportation Impact Fees met the statutory requirement that 'system improvements' be  
23 'reasonably related to' and 'reasonably benefit' the specific development. RCW 82.02.050(3(a)-  
24 (c), .090(9)." *Drebeck*, Supra at 306.

1           12.     Except for minor adjustments and updates Olympia's Impact Fee Ordinance is the  
2 same as the one examined in the *Drebick* decision.

3           **B.     Findings Relating to an Independent Fee Analysis.**

4           1.     As noted earlier, a project's Transportation Impact Fee is established either by  
5 Schedule D or by an independent fee analysis.

6           2.     As also noted earlier, the Director, in his/her judgment, can undertake an  
7 independent fee analysis without request by the applicant if the Director concludes that none of  
8 the fee categories or fee amounts found in Schedule D accurately describe or capture the impacts  
9 of the new development. OMC 15.04.050(a).

10          3.     The Director, Mr. Smith, did not undertake an independent fee analysis pursuant  
11 to 15.04.050(a) for the reason that Mr. Smith did not see any reason to deviate from Schedule D.  
12 His decision was based upon the fact that mini warehouses are expressly provided for in the fee  
13 schedule and, further, that the Applicant had already submitted six other building applications for  
14 the project's other mini warehouse buildings, and had not objected to the use of Schedule D for  
15 the other six buildings.

16          4.     As noted earlier, the applicant may request that the City undertake an independent  
17 fee analysis subject to payment of a \$500 application fee. OMC 15.04.050(c) and (e).

18          5.     Douglass did not ask the City to prepare an independent fee analysis, nor did  
19 Douglass pay the \$500 fee to have the City undertake an independent fee analysis.

20          6.     As noted earlier, the applicant may prepare its own independent fee analysis.  
21 OMC 15.04.050(d). If the applicant elects to undertake its own independent fee analysis it must  
22 pay an application fee of \$500 together with a down payment of \$500 for the City's cost in  
23 reviewing the independent fee calculation. OMC 15.04.050(e).

24          7.     Douglass did not undertake an independent fee analysis nor did it pay the required  
25 fees associated with an independent fee analysis.



1           8.       The building application for Building 2 was submitted on May 24, 2017. The  
2 building permit was issued January 31, 2018, approximately eight months later.

3           9.       Despite having eight months between submission of the building permit  
4 application and its approval, Douglass elected not use this available time to undertake its own  
5 independent impact fee analysis. Mr. Douglass testified that he chose not to do so as he believed  
6 that the City would be unwilling to consider his information and adjust the impact fee  
7 accordingly.

8           10.      Although Douglass did not submit an independent fee analysis, or ask the City to  
9 undertake an independent fee analysis, Douglass argues that the City Director erred by not  
10 preparing an independent fee calculation pursuant to OMC 15.04.050(a). In the alternative,  
11 Douglass argues that, on appeal, the Hearing Examiner has the authority to make an independent  
12 fee calculation.

13           C.       **Findings Relating to Douglass's Challenges to the Various Components of the**  
14 **Transportation Impact Fee.**

15           1.       Douglass does not challenge the City's conclusion that each new PM Peak trip has  
16 a cost of \$2,999 in necessary transportation improvements.

17           2.       Douglass does not dispute that it is reasonable to assume a standard trip length of  
18 3.0 miles in Olympia when calculating Transportation Impact Fees.

19           3.       Douglass does dispute the following matters relating to Schedule D and the  
20 calculations for determining the project-specific impact fee:

21               a.       The use of square footage/Gross Floor Area as the unit of measure for  
22 mini warehouses instead of the number of rental units;

23               b.       The reliance on .26 PM Peak trips per thousand square feet for mini  
24 warehouses;

1 c. The assumption that 100% of PM Peak trips to a mini warehouse will be  
2 "new trips" and not "pass by" trips; and

3 d. Use of an average trip length of 5.1 miles instead of the standard 3.0  
4 miles, resulting in a trip adjustment factor of 1.70.

5 4. In support of its position Douglass presented the testimony of its expert, Todd  
6 Whipple, of Whipple Consulting Engineers ("Mr. Whipple"). Mr. Whipple is a licensed Civil  
7 Engineer and Traffic Engineer with thirty years of professional experience and licensing in eight  
8 states. Mr. Whipple has testified as an expert witness in various states and types of hearings and  
9 has contributed to the ITE Manual. Mr. Whipple admits, however, that he has never served as a  
10 consultant to any local government on the issue of Transportation Impact Fees and has not  
11 participated in the establishment of impact fees by any municipality.

12 5. The City responds to Douglass' arguments, and the testimony of Mr. Whipple  
13 through the expert testimony of Don Samdahl ("Mr. Samdahl"). Mr. Samdahl is a principal with  
14 Fehr Peers and is a Transportation Engineer and Planner specializing in impact fee studies. Mr.  
15 Samdahl was responsible for Olympia's original 1995 Transportation Study and has continued to  
16 advise Olympia on its Transportation Impact Fees ever since, including the November 2016  
17 Transportation Impact Fee Update referred to earlier. Among other things, Mr. Samdahl  
18 assisted the City of Bellevue in establishing the first Transportation Impact Fee in the State. He  
19 has subsequently assisted with establishing Transportation Impact Fees in thirty counties and  
20 cities in Washington. For most of these jurisdictions, including Olympia, he has served as  
21 project manager and analyst and has been responsible for the studies supporting the  
22 Transportation Impact Fees. He has also testified as an expert witness in our courts on the  
23 methodology used in establishing Transportation Impact Fees, and served as Olympia's expert  
24 witness in the *Drebeck* lawsuit. In addition, Mr. Samdahl has previously served as President of  
25

1 the Washington Section of ITE, and was asked by ITE to review the 10th Edition of the ITE  
2 Transportation Manual.

3       D.     **Findings Relating to Use of Square Footage/Gross Floor Area as the Unit of**  
4 **Measure.**

5       1.     When calculating Transportation Impact Fees for mini warehouses, Olympia  
6 relies upon the project's square footage as the unit of measure, resulting in a standard  
7 Transportation Impact Fee of \$1.33 per square foot of Gross Floor Area.

8       2.     Olympia's reliance upon square footage as the unit of measure is derived from the  
9 ITE Transportation Manual. The ITE Transportation Manual is widely relied upon for  
10 transportation-related calculations.

11       3.     The ITE Manual offers two options for the unit of measure when calculating  
12 Transportation Impact Fees for mini warehouses: (a) square footage (relied upon by Olympia)  
13 or (b) the number of storage units.

14       4.     Douglass's expert, Mr. Whipple, testified that it was "ludicrous" for Olympia to  
15 rely upon the square footage unit of measure for mini warehouses. Mr. Whipple argues that the  
16 square footage unit of measure fails to recognize the individual size of storage units and, unless  
17 the entire storage facility is unusually large, or each individual storage unit is unusually small,  
18 the square footage unit of measure will result in unrealistically high traffic trip calculations. As  
19 an example, a mini warehouse designed solely to store RV's may have the same square footage  
20 as one designed for small individual storage spaces and yet the square footage unit of measure  
21 would impose the same Transportation Impact Fee on each, even though the two facilities would  
22 generate a significantly different number of trips. Mr. Whipple therefore concludes that the only  
23 reasonable unit of measure for mini warehouses is the number of storage units.

24       5.     Mr. Samdahl responds to Mr. Whipple's testimony by noting that the data  
25 gathered for the ITE Manual reveals that far more jurisdictions rely on the square footage unit of

1 measurement for mini warehouses than on the number of storage units. Indeed, Mr. Samdahl has  
2 personal knowledge that at least fifteen jurisdictions in Western Washington rely on the square  
3 footage unit of measure for mini warehouses and, conversely, he is not aware of any jurisdictions  
4 relying on the number of storage units. Mr. Samdahl explained that it is standard practice to rely  
5 on the square footage unit of measure for commercial projects, while relying on the number of  
6 units measure for residential projects. Mr. Samdahl also noted that Olympia has relied on the  
7 square footage unit of measure since it first established its Transportation Impact Fee in 1995,  
8 and that use of this unit of measure was approved in the *Drebick* decision.

9       **E. Findings of Fact Relating to the Number of PM Peak Trips Per Unit of**  
10 **Measure.**

11       1. Olympia's Transportation Impact Fee analysis assumes that every thousand square  
12 feet of mini warehouse facility generates .26 trips during the PM Peak travel period. Based upon  
13 this assumption Douglass's Building #2, having 126,000 square feet, would generate  
14 approximately 33 travel trips during the PM Peak period.

15       2. Olympia's reliance on .26 travel trips per thousand square feet of mini warehouse  
16 is taken directly from the 9th Edition of the ITE Transportation Manual.

17       3. Mr. Whipple argues that reliance on .26 trips per thousand square feet is  
18 unwarranted, leading to inflated impact fees. Mr. Whipple points to the most recent (10th)  
19 Edition of the ITE Transportation Manual, released in late 2017, which reduces the PM Peak  
20 trips per thousand square feet of mini warehouse from .26 to .17. In other words, under the most  
21 recently released Traffic Manual the number of PM Peak trips generated by Douglass' Building  
22 #2 would be reduced from 33 to 21 trips, or a reduction of approximately one-third the number  
23 of trips.

24       4. On cross examination Mr. Whipple admitted that the 10th Edition of the ITE  
25 Traffic Manual did not exist at the time Douglass applied for the building permit for Building #2,

1 as the building application occurred in May 2017 and the 10th Edition of the ITE Manual was  
2 not released until late in the year.

3 5. In further response to Mr. Whipple's testimony, Mr. Samdahl and the City's  
4 Director, Mr. Smith, explained that the City's fee schedule relies on the then current edition of  
5 the ITE Manual at the time the schedules are established. The recent release of the 10th Edition  
6 of the Manual does not affect any Transportation Impact Fee schedules currently in existence,  
7 but it may cause an adjustment when the schedules are next reviewed.

8 **F. Findings Relating to the Number of "New Trips".**

9 1. Olympia's Transportation Impact Fee is premised on the concept that only new  
10 traffic trips generated by the project should result in impact fees, and that the project should not  
11 pay impact fees for traffic that is otherwise occurring. New development is therefore imposed  
12 Transportation Impact Fees only for "new trips" and not for other traffic trips already occurring.

13 2. Olympia's Transportation Impact Fee is based upon the premise that 100% of the  
14 PM Peak period trips to a mini warehouse will be new trips that would not have otherwise  
15 occurred.

16 3. Olympia's reliance upon 100% of the PM Peak trips being "new trips" is again  
17 taken directly from the ITE Transportation Manual.

18 4. Mr. Whipple strongly disagrees with the assumption that 100% of PM Peak trips  
19 will be new trips, and describes this conclusion as "phenomenal". Mr. Whipple believes that a  
20 significant number of trips to Douglass' facility would be "pass by" trips, that is, trips where the  
21 traveler is heading from one destination to another and only stopping at the warehouse as he/she  
22 passes by. "Pass by" trips are not "new trips" and Mr. Whipple contends that the assumption that  
23 100% of all trips being new trips is unrealistic. Mr. Whipple undertook a brief questioning of  
24 Douglass' storage customers in other cities (Exhibit A-20) which suggested that perhaps fifty  
25 percent or more stopped at the storage facility as they passed by and not as a new trip.

1           5.       Mr. Samdahl's responds to Mr. Whipple's testimony by explaining that there is no  
2 published data evidencing his claim that a percentage of trips to the facility will be pass by trips.  
3 Mr. Samdahl adds that most of what Mr. Whipple claims to be "pass by trips" are, in fact,  
4 "diverted trips". "Diverted trips" involve traveling along one street and then diverting off that  
5 street to gain access to the project before proceeding to another destination, while "pass by trips"  
6 are limited to only those where the project is located directly on the traveler's intended route and  
7 do not require diverting to another street. The Manual recognizes that a diverted trip has the  
8 same impact on transportation needs as a new trip and is therefore included within the definition  
9 of new trips. For all of these reasons Mr. Samdahl believes that the City is justified in  
10 considering all PM Peak trips to the warehouse to be new trips.

11           G.       **Findings Relating to the Trip Adjustment Variable.**

12           1.       The Transportation Impact Fee is premised on the average length of a new trip  
13 being 3.0 miles.

14           2.       For each type of land use the average trip length is adjusted by a trip adjustment  
15 factor based upon that land use's average trip length as compared to the City's standard trip  
16 length of 3.0 miles.

17           3.       Schedule D assumes that for mini warehouses the standard trip length will be 5.1  
18 miles. This results in a trip adjustment factor of 1.7 ( $5.1 \div 3.0 = 1.7$ ).

19           4.       Mr. Whipple contends that the City's trip adjustment factor of 1.7 for mini  
20 warehouses has no basis in reality, either in general or with respect to Douglass' project.

21           5.       Mr. Whipple supports his position by several maps (Exhibit A-16 and A-17)  
22 showing a 5 mile radius from the project site. Map A-16 demonstrates that this radius extends  
23 well beyond the City limits of Olympia. Map A-17 demonstrates that there are 5 other existing,  
24 competing mini warehouses within the 5 mile radius. Mr. Whipple argues that it is unrealistic to  
25 expect customers to travel from other cities to use the Douglass storage facility. It is also

1 unrealistic to expect customers to select the Douglass storage facility over several other closer  
2 facilities. Mr. Whipple therefore concludes that the 1.7 trip adjustment factor is wholly  
3 inappropriate for the Douglass facility.

4         6.       On a more general basis, Mr. Whipple argues that the 1.7 trip adjustment factor is  
5 not based upon any good source of data. Mr. Whipple is aware that this trip adjustment variable  
6 was set in 1995 when the Transportation Impact Fee was first established, and that the variable  
7 was derived from data for warehouses in general. But Mr. Whipple argues that mini warehouses  
8 have little relation to other types of warehouses, and their trip adjustment variable should not be  
9 based upon data for general warehouses. Stated slightly differently, Mr. Whipple argues that the  
10 travel habits of mini warehouse customers are far different than those for conventional  
11 warehouses and that the average trip length for a mini warehouse customer is far shorter than for  
12 a general warehouse customer.

13         7.       Mr. Whipple concludes that there is no good basis to impose a trip adjustment  
14 factor on mini warehouses and that Transportation Impact Fees for such uses should assume the  
15 City's standard trip length of 3.0 miles.

16         8.       Mr. Samdahl responds to Mr. Whipple's arguments by confirming that the trip  
17 adjustment variable for mini warehouses was established in 1995 when the Impact Fee  
18 Ordinance was first established, and that at that time there was no separate category for mini  
19 warehouses. Instead, there was only one general category for all types of warehouses, including  
20 mini warehouses. Data collected for all types of warehouses produced a trip adjustment variable  
21 of 1.7 - the variable Olympia has used since then for both warehouses and mini warehouses.

22         9.       Mr. Samdahl adds that since 1995 there have been no known studies for trip  
23 adjustment variable specific to mini warehouses. The data gathered for warehouses in general  
24 therefore remains the only reliable data. Mr. Samdahl concludes that in the absence of any data  
25

specific to mini warehouses it remains entirely appropriate to rely on data associated with warehouses in general.

**H. Findings Relating to Douglass' Requested Relief.**

1. At the conclusion of the hearing Douglass argued that Schedule D should be modified for mini warehouses in the following respects:

a. The trips per peak hour should be reduced from .26 to .17 in accordance with the changes reflected in the 10th Edition of the ITE Trip Generation Manual.

b. The percentage of new trips should be reduced from 100% to 75% to recognize that at least 25% of trips to the mini warehouse are pass by trips.

c. The trip length adjustment variable should be eliminated.

2. With these three adjustments the Transportation Impact Fee would be calculated as follows: 126 (thousand square feet) x .17 (number of trips) x .75 (new trips) x 1.0 (trip adjustment variable) x \$2,999 = \$48,178.93.

3. In the alternative, Douglass asks that if the Hearing Examiner does not find Schedule D to be in error, that nonetheless the Transportation Impact Fee be reduced to this amount based upon the Hearing Examiner's authority, on appeal, to undertake his own independent fee calculation.

4. Douglass further contends that, notwithstanding the Supreme Court's decision in *Drebeck*, a refusal to adjust Douglass's Transportation Impact Fee as suggested is violative of his substantive due process rights per the *Nollan/Dollan* cases<sup>1</sup> and their progeny.

---

<sup>1</sup> *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed. 2nd 677 (1987); *Dollan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed 2nd 304 (1994).



1 ANALYSIS

2 1. Burden of Proof and Standard of Review on Appeal.

3 The authority of the Hearing Examiner, including the burden of proof and the standard on  
4 review, is established by the City Council in its enabling ordinances unless these ordinances are  
5 silent on such matters. The Olympia City Council, pursuant to OMC 18.75.050(f), has  
6 established that the burden of proof on appeal is with the appellant: "The Examiner shall only  
7 grant the relief requested by an appellant *upon finding that the appellant has established*  
8 *that . . . .*"

9 OMC 18.75.050(f) also establishes the standard of review on appeal to the Hearing  
10 Examiner. Seven standards of review are set forth depending upon the type of issue involved<sup>2</sup>  
11 with the one most applicable to this matter being Subsection 4: "The decision is a clearly  
12 erroneous application of the law to the facts".

13 To summarize, it is Douglass' burden on appeal to prove that the City's Transportation  
14 Impact Fee was clearly erroneous.

15 2. Douglass's Argument that the City Director Should Have Undertaken an  
16 Independent Fee Analysis on his own Initiative.

17 Douglass' first argument on appeal is that the City's Director, Mr. Smith, should have  
18 undertaken an independent fee analysis for Building #2 on his own initiative pursuant to OMC

- 19 \_\_\_\_\_
- 20 <sup>2</sup> (1) the staff engaged in unlawful procedures or failed to follow a prescribed procedure;  
21 (2) the staff's decision was an erroneous interpretation of the law;  
22 (3) the decision is not supported by substantial evidence within the context of the whole  
23 record;  
24 (4) the decision is a clearly erroneous application of the law to the facts;  
25 (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.

1 15.04.050(a). Douglass's argument is not well supported. Mini warehouses are expressly  
2 provided for in Schedule D, leaving no reason for Mr. Smith to have to turn to an independent  
3 fee analysis to establish a basic impact fee. Further, Douglass had earlier presented six other  
4 building applications for the project's other mini warehouse buildings and on each occasion had  
5 accepted the City's reliance on Schedule D for the correct Transportation Impact Fee. In short,  
6 there was nothing clearly erroneous about the Director's decision to not undertake an  
7 independent fee analysis on his own initiative.

8 3. **Douglass's Arguments that the Various Components of Schedule D are**  
9 **Invalid.**

10 Douglass argues that reliance on: square footage as the unit of measure; on .26 trips per  
11 PM Peak period; on 100% of trips being new trips; and the use of a 1.7 trip adjustment variable  
12 are all invalid. I respectfully disagree with each of these arguments. More specifically:

13 a. **The Unit of Measure.** Olympia's reliance upon square footage as the unit of  
14 measure when calculating Transportation Impact Fees for mini warehouses is taken directly from  
15 the ITE Trip Generation Manual. The fact that the Manual also offers the option of using the  
16 number of storage units as the unit of measure is of little importance. When the ITE Trip  
17 Generation Manual - the source widely relied upon for such matters - offers two reasonable  
18 options, the choice of option is a legislative one for the City Council. The Council's selection of  
19 the square footage unit of measure is not clearly erroneous. Indeed, no evidence has been  
20 presented that any other municipality in Western Washington relies on the number of storage  
21 units as the unit of measure.

22 b. **Number of PM Peak Trips.** Douglass correctly points out that the newest edition  
23 of the ITE Trip Generation Manual, issued late 2017, adjusts the number of PM Peak trips for  
24 mini warehouses from .26 trips to .17 trips. But, while true, this has no bearing on the outcome.  
25 The 10th Edition of the Manual did not yet exist when Douglass submitted its building permit

1 application for Building #2. Schedule D then in effect was based upon the 9th Edition of the  
2 Trip Generation Manual, being the most current version of the Manual then in effect. The City's  
3 reliance on the then existing Trip Manual was not clearly erroneous.

4 c. Number of New Trips. Douglass argues that surely some percentage of PM Peak  
5 trips to a mini warehouse must be "pass by" trips and not "new trips". But Douglass's anecdotal  
6 data of its Tacoma customers' travel habits is no basis to challenge the City's reliance on the Trip  
7 Generation Manual, especially when Douglass incorrectly considers diverted trips as the same as  
8 pass by trips. Douglass failed to present any well founded data that the City's reliance on the  
9 Manual is in error. The City's assumption that all trips are new trips is not clearly erroneous.

10 d. Trip Adjustment Variable. Douglass's most compelling argument is with respect  
11 to the trip adjustment variable of 1.7, resulting in an average trip to mini warehouses of 5.1  
12 miles. Douglass's arguments have an intuitive quality, especially with additional anecdotal  
13 evidence as to the current location of competing facilities and the likely travel patterns of self  
14 storage customers. But the City's decision to rely on the best available data is not clearly  
15 erroneous, especially when no data has been gathered specifically for mini warehouse facilities.

16 e. The Effect of *Drebick*. It must also be remembered that all of the methodology  
17 discussed above was examined and approved in the Supreme Court's decision in *Drebick*. The  
18 Court concluded that the then Hearing Examiner had considered each element of the  
19 Transportation Impact Fee and found it to be correctly established. The Court added that, once  
20 the Hearing Examiner reached this conclusion, he should have ended his analysis and approved  
21 the City's Transportation Impact Fee. The City's current Transportation Impact Fee methodology  
22 is virtually unchanged from what was examined in *Drebick*. There is no reason to conclude that  
23 the Supreme Court's decision has lost any of its validity.

1           4.       **Douglass's Argument that the Hearing Examiner has Authority on Appeal to**  
2 **Undertake an Independent Fee Calculation.**

3           Douglass separately argues that, even if the variables relied upon in the Schedule D  
4 calculations are valid, the Hearing Examiner still has authority on appeal to undertake his own  
5 independent fee calculation based upon the information presented during the hearing. In other  
6 words, even if Schedule D is valid, Douglass argues that its information relating to PM Peak  
7 trips, the number of new trips, and the appropriate trip variable, should all be considered by the  
8 Hearing Examiner and the impact fee revised accordingly. I respectfully disagree.

9           The City's Principal Planner, Mr. Smith, concludes that Chapter 15.04 OMC does not  
10 give the Hearing Examiner authority to undertake an Independent Fee Calculation when the  
11 applicant failed to have an independent fee analysis undertaken during the building permit  
12 review process. OMC 18.75.040(f) declares that "with regard to decisions of City Staff, the  
13 Examiner shall accord due deference to the expertise and experience of the staff rendering such  
14 decision." Thus, while Mr. Smith's conclusion is not binding on the Hearing Examiner it must  
15 be accorded due deference. But even if Mr. Smith had not come to this conclusion the Hearing  
16 Examiner would reach the same conclusion on his own.

17           OMC 15.04.040(d) requires that "impact fee shall be assessed at the time the complete  
18 building permit application is submitted for each unit in the development., using either the  
19 impact fee schedules then in effect or an independent fee calculation, at the election of the  
20 applicant . . ." OMC 15.04.050(c) requires that:

21           "If an applicant opts not to have the impact fees determined according to Schedule  
22 D, the applicant may elect an independent fee calculation for the development  
23 activity for which a building permit is sought. In that event, the applicant may  
24 prepare and submit his/her own independent fee calculation, or may request that  
25 the City prepare an independent fee calculation. **The applicant must make the  
election between fees calculated under Schedule D and an independent fee  
calculation prior to issuance of the building permit for the development."**

1 The City Council's directive in these two provisions is clear and unequivocal. The  
2 opportunity to present an independent fee analysis is only allowed prior to issuance of the  
3 building permit. There is no provision allowing for any independent fee analysis to be raised for  
4 the first time on appeal. Indeed, such an argument is wholly in conflict with the provisions of  
5 Chapter 15.04 OMC.

6 Furthermore, OMC 15.04.090(d), regulating appeals of impact fee determinations, only  
7 allows the Hearing Examiner to review the determination of the Director. It does not allow the  
8 Hearing Examiner to undertake an independent fee calculation.

9 It is certainly possible, and perhaps probable, that Douglass would have had its  
10 Transportation Impact Fee reduced from the amount calculated under Schedule D if it had simply  
11 undertaken an independent fee analysis and provided the Director with the same information it  
12 presented on appeal. It is unfortunate that the Applicant knowingly elected to forego this  
13 opportunity. But having made this choice the Appellant is without authority to present an  
14 independent fee analysis for the first time on appeal, and the Hearing Examiner is without  
15 authority to consider it.

#### 16 5. Douglass's Constitutional Arguments.

17 Douglass's final argument is that the City's Transportation Impact Fee is in violation of  
18 Douglass's substantive due process rights.

19 Consideration of this argument by the Hearing Examiner is a challenging one. OMC  
20 18.75.040(f)(6) authorizes the Hearing Examiner to consider whether the City's decision  
21 "violates the constitutional rights of the party seeking relief." It is believed that Olympia is the  
22 only municipality giving its Hearing Examiner the authority to consider constitutional issues.  
23 The granting of this authority is questionable as our Superior Courts are generally regarded as  
24 having original jurisdiction over constitutional issues. Nonetheless, for the Hearing Examiner to  
25 declare this provision to be unconstitutional would, arguably, be improper as well. Therefore,

1 until direction is provided by our courts the Hearing Examiner will assume this provision to be  
2 valid, and will review this matter in a constitutional context.

3 But this constitutional review is a simple one. In *Drebick* our State Supreme Court  
4 declared Olympia's Transportation Impact Fee Ordinance to be constitutionally valid.

5 Nonetheless, Douglass argues that the U.S. Supreme Court's decision in *Koontz v. John's*  
6 *River Water Management District*<sup>3</sup> effectively overrules *Drebick*. This is an arguable assertion  
7 but, even if correct, it is not the Hearing Examiner's role to overrule the State Supreme Court.  
8 Again, *Drebick* remains authority for the position that Olympia's Transportation Impact Fee  
9 Ordinance is constitutionally valid.

10 It should be added that the City's Transportation Impact Fee Ordinance achieves its  
11 validity by the very provisions that Douglass chose to forego, that is, by giving every applicant  
12 the opportunity to show why the fee established by Schedule D is disproportionate or  
13 inequitable. Having knowingly disregarded this opportunity, Douglass is precluded from  
14 claiming a violation of his substantive due process rights.

15 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

16 **CONCLUSIONS OF LAW**

- 17 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.  
18 2. Any Conclusions of Law contained in the foregoing Background, Hearing,  
19 Findings or Analysis sections are incorporated herein by reference and adopted by the Hearing  
20 Examiner.  
21 3. The Hearing Examiner must accord due deference to the expertise and experience  
22 of the City Staff rendering the decision. OMC 18.75.040(f).

23  
24 <sup>3</sup> 570 U.S. 595, 133 S.Ct. 2586, 196 L.Ed. 2nd 697 (2013)

1           4.       Pursuant to OMC 18.75.040(f) the Hearing Examiner shall only grant the relief  
2 requested by an appellant upon finding that the appellants has established that:

3                   a.       The staff engaged in unlawful procedures or failed to follow a prescribed  
4 procedure;

5                   b.       The staff's decision was an erroneous interpretation of the law;

6                   c.       The decision is not supported by substantial evidence within the context of  
7 the whole record;

8                   d.       The decision is a clearly erroneous application of the law to the facts;

9                   e.       The decision is outside the authority or jurisdiction of the decision-maker;

10                  f.       The decision violates the constitutional rights of the party seeking relief;

11  
12 or

13                  g.       The decision is clearly in conflict with the City's adopted plans, policies or  
14 ordinances.

15           5.       The Appellant's Transportation Impact Fee was correctly calculated in accordance  
16 with Schedule D. OMC 15.16.040.

17           6.       When establishing Schedule D and the specific provision for mini warehouse  
18 facilities, the City's reliance on: (a) square footage as the unit of measure; (b) .26 PM Peak Hour  
19 trips per thousand square feet; (c) 100% of trips being new trips; and (d) a trip adjustment  
20 variable of 1.7 were not clearly erroneous.

21           7.       The City Director's decision to not undertake an independent fee analysis on his  
22 own initiative as allowed by OMC 15.040.050(a) was not clearly erroneous.

23           8.       The Appellant's Transportation Impact Fee was correctly calculated in accordance  
24 with Chapter 15.04 OMC.  
25

1           9.     The Hearing Examiner is without authority to undertake an independent fee  
2 calculation for the first time on appeal.

3           10.    The calculation of the Appellant's Transportation Impact Fee in accordance with  
4 Chapter 15.04 OMC is not a violation of the Appellant's substantive due process rights.

5           11.    Pursuant to OMC 18.75.040(f):

6               (a)   The staff has not engaged in unlawful procedures or failed to follow the  
7 prescribed procedure;

8               (b)   The staff's decision is not an erroneous interpretation of the law;

9               (c)   The decision is supported by substantial evidence within the context of the  
10 whole record;

11              (d)   The decision is not a clearly erroneous application of law to the facts;

12              (e)   The decision is not outside the authority or jurisdiction of the decision-  
13 maker;

14              (f)   The decision does not violate the constitutional rights of the party seeking  
15 relief; and

16              (g)   The decision is not clearly in conflict with the City's adopted plans,  
17 policies or ordinances.

18           12.    The Appellant's appeal of the Transportation Impact Fee imposed on Building #2  
19 should be denied.

20           Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing  
21 Examiner makes the following:  
22  
23  
24  
25



**DECISION**

The appeal of Douglass's Transportation Impact Fee of \$167,580 for Building #2 is  
**denied.**

DATED this 23 day of August, 2018.



---

Mark C. Scheibmeir  
City of Olympia Hearing Examiner

