

Agenda Number: 2 Project Number: 1010019 Case #: 14EPC-40023 May 08, 2014

Staff Report

Agent Bob Keeran – Keeran 1, LLC

Appellant Bob Keeran – Keeran 1, LLC

Appeal of a denial requesting a refund and/or reimbursement of drainage excess impact fee credits for system improvements in the far

northeast service area

Tract A-1 Oakland Heights
Subdivision recorded on April 17,
2006, in the records of the Bernalillo
County Clerk Book 2006C and page

119 (Zone Atlas page C-20)

The La Cueva Arroyo Channel located between Barstow on the west and Ventura on the east and between Eagle Rock on the north and Alameda on the south

Staff Recommendation

DENIAL of Case # 14EPC-40023 based on Findings 1-10 beginning on Page 5

Tony Loyd, Impact Fees Administrator

Summary of Analysis

Request

Location

Legal Description

The appellant is requesting a refund and/or reimbursement from the City for all or part of the amount of the drainage excess impact fee credits from revenue generated by impact fees paid by new development for system improvements in the far northeast service area.

The system improvement is defined as the construction of approximately 1300' of the La Cueva Arroyo Channel,

associated land costs and a retaining wall as required by the City of Albuquerque and the Albuquerque Metropolitan Flood Control Authority (AMAFCA).

The appellant contends, 1) he is entitled to a refund because he can "redeem" his drainage excess impact fee credits for a "refund" of those credits based on Section 14-19-19 CREDITS under Subsection (J) (7) (f) of the Ordinance. Also, he claims that because his excess credits do not expire for 15 years he would be entitled to a refund at any time during this 15 year time period.; 2) he is entitled to a refund because he met the one year time limitation of the event giving rise to the right to claim a refund based on Section 14-19-18 REFUNDS of the Ordinance; 3) that the City has not provided financial information related to drainage impact fees in the northeast service area.

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 a refund and/or reimbursement from the City for all or part of the amount of the drainage excess impact fee credits from revenue generated by impact fees paid by new development for system improvements in the far northeast service area.

Appeal Report

SUMMARY

Request

 Appeal of a denial requesting a refund and/or reimbursement of drainage excess impact fee credits.

Location

• The La Cueva Arroyo Channel, which is generally located between Barstow on the west and Ventura on the east and between Eagle Rock on the north and Alameda on the south.

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EPC Role

- The EPC's role is to hear this case based on Section 14-19-20 ADMINISTRATIVE APPEALS of the Impact Fee Ordinance. For full text, see Attachment "A", Impact Fee Ordinance, Section 14-19-20 ADMINISTRATIVE APPEALS.
- This case would be considered a quasi-judicial matter as the EPC's decision would be based on the City's adopted Impact Fee Ordinance.

History/Background/Context

- The subject of the appeal is the denial, by the Impact Fee Administrator, of the appellant's request for a refund and/or reimbursement from the City for all or part of the amount of the drainage excess impact fee credits from revenue generated by impact fees paid by new development for system improvements in the far northeast service area.
- The system improvement, for which the appellant received drainage excess impact fee credits, was the construction of approximately 1300' of the La Cueva Arroyo Channel, associated land costs and a retaining wall as required by the City of Albuquerque and the Albuquerque Metropolitan Flood Control Authority (AMAFCA). For the purpose of issuing drainage impact fee credits, the total cost of the improvement was considered to be \$3,268,739.46.

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 Attachment "A" and can be referred to interchangeably as "Ordinance".
- Development Process Manual, Chapter 18, Impact Fees Regulations, which is included as Attachment "B" and can be referred to interchangeably as "DPM".

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, see Attachment "A".

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. The applicable sections within the Ordinance and DPM are 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. The appellant contends he is entitled to a refund because he can "redeem" his drainage excess impact fee credits for a "refund" of those credits based on Section 14-19-19 CREDITS under Subsection (J) (7) (f) of the Ordinance. Also, the appellant claims that because his excess credits do not expire for 15 years he would be entitled to a refund at any time during this 15 year time period.

- Under Section 14-19-21 and Section 14-19-98 of the Ordinance and Section 2 of the DPM, the Impact Fees Administrator is authorized to interpret the Impact Fee Ordinance. The interpretation of the word redeem or process to redeem, within the context of the Ordinance, means to offset the impact fees that would otherwise be due and payable to the City. Under Section 14-19-3 DEFINITIONS of the Ordinance, OFFSET is defined as "The amount by which an impact fee is reduced to fairly reflect the credits applied for system improvements".
- Under Section 14-19-19 CREDITS (J) (7) (f) of the Ordinance, "Excess credits must be applied for, used, sold, or redeemed, if at all, within 15 years after their issuance. Excess credits issued prior to adoption of this article shall be permitted to be used, sold or redeemed within 15 years after the adoption of this article". The appellant currently owns excess credits which have an expiration date of approximately December 10, 2027 which he can use, sell or redeem.
- Under Section 14-19-19 CREDITS (J) (7) of the Ordinance, "Excess credits shall be subject to the following restrictions:
 - (c) The city shall, upon request from the credit-holder of excess credits, after acceptance by the city of the project creating credits, provide reimbursements for excess credits on a first in, first out basis and shall not be 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.
 - (d) Except as otherwise provided in §§ 14-19-1 et seq., excess credits shall not constitute a liability of the city, and the city shall not be obligated to reimburse excess credits".

Applicable Sections of the Ordinance

- Section 14-19-18 REFUNDS
- Section 14-19-19 CREDITS
- Section 14-19-21 PROMULGATION OF RULES
- Section 14-19-98 ENFORCEMENT

Applicable Section of the Development Process Manual

- Section 2 ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY
- 2. The appellant contends he is entitled to a refund because he met the one year time limitation of the event giving rise to the right to claim a refund based on Section 14-19-18 REFUNDS of the Ordinance.
- As Impact Fees Administrator, the event is defined as the construction and acceptance of the La Cueva Arroyo Channel Improvements from 1300 feet west of Ventura to Barstow per an agreement titled "Agreement to Provide Maintenance for Channel Improvements on the La Cueva Arroyo from 1300 feet west of Ventura to Barstow" as signed by the Albuquerque Metropolitan Arroyo Flood Control Authority "AMAFCA", the City of Albuquerque "CITY" and LLAVE Construction, Inc. "OWNER" and dated April 13th

2005 (Attachment "C") and the subsequent issuance of drainage impact fee credits in three (3) installments.

- Key dates defining the one (1) year time period:
 - 1. January 31, 2008 Letter of Acceptance from AMAFCA, La Cueva Arroyo Channel Improvements from 1300 feet west of Ventura to Barstow. AMAFCA accepts the channel and related infrastructure of the project for maintenance on this date. One year warranty period also begins on this date (Attachment "D").
 - 2. April 8, 2011 AMAFCA and the City of Albuquerque enter into a memorandum of understanding "MOU" titled "Memorandum of Understanding for the Transfer of Payment for the Letter of Map Revision for La Cueva Arroyo Between Barstow and Alameda" (Attachment "E").
 - 3. November 8, 2012 Letter of Map Revision becomes effective (Attachment "F").
 - 4. February 14, 2014 The date of appellant's request for a refund of excess credits as submitted to the City.

Applicable Sections of the Ordinance

- Section 14-19-18 REFUNDS
- Section 14-19-19 CREDITS
- Section 14-19-21 PROMULGATION OF RULES
- Section 14-19-98 ENFORCEMENT

Applicable Section of the Development Process Manual

- Section 2 ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY
- 3. The appellant contends that the City has not provided financial information related to drainage impact fees in the northeast service area.
- As of the date of this report, the appellant has not requested any financial information from the Impact Fees Administrator, the Records Custodian for the Planning Department or the City Clerk's Office. However, a summary from the Department of Municipal Development CIP / Fiscal is being provided (Attachment "G"). The summary shows, among other information, project year, project service area, project description and funding (i.e. amount spent, amount encumbered and total collected).
- The summary shows no unencumbered balance.

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 a refund and/or reimbursement from the City for all or part of the amount of the drainage excess impact fee credits from revenue generated by impact fees paid by new development for system improvements in the far northeast service area.

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PROPOSED FINDINGS - (14EPC-40023) (May 8, 2014)

- 1. This case is an appeal of a denial, by the Impact Fee Administrator, of the appellant's request for a refund and/or reimbursement from the City for all or part of the amount of the drainage excess impact fee credits from revenue generated by impact fees paid by new development for system improvements in the far northeast service area.
- 2. The system improvement, for which the appellant received drainage excess impact fee credits, is defined as the construction of approximately 1300' of the La Cueva Arroyo Channel, associated land costs and a retaining wall as required by the City of Albuquerque and the Albuquerque Metropolitan Flood Control Authority (AMAFCA).
- 3. 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.
- 4. The Impact Fee Ordinance Section 14-19-18 REFUNDS, allow the current owner of record of property, on which an impact fee has been paid, to request a refund if certain criteria is met.
- 5. 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.
- 6. The Impact Fee Ordinance Section 14-19-98 ENFORCEMENT and Section 2 ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY of the Development Process Manual, authorize the Impact Fees Administrator to interpret and carry out general administration of all impact fees enacted by the City of Albuquerque.
- 7. Under Section 14-19-19 CREDITS (J) (7) (c) of the Impact Fee Ordinance, the City shall not be obligated to provide reimbursements for excess credits in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area. As shown in Attachment "G", there is no unencumbered balance in the impact fee fund for storm drain facilities in the far northeast service area.

- 8. Under Section 14-19-19 CREDITS (J) (7) (d) of the Impact Fee Ordinance, except as otherwise provided, excess credits shall not constitute a liability of the city, and the city shall not be obligated to reimburse excess credits.
- 9. The Impact Fees Administrator has interpreted the word redeem or process to redeem, within the context of the Ordinance, to mean to offset the impact fees that would otherwise be due and payable to the City. By Ordinance, OFFSET is defined as "The amount by which an impact fee is reduced to fairly reflect the credits applied for system improvements".
- 10. The appellant voluntarily constructed the La Cueva Arroyo Channel Improvements from 1300 feet west of Ventura to Barstow per an agreement titled "Agreement to Provide Maintenance for Channel Improvements on the La Cueva Arroyo from 1300 feet west of Ventura to Barstow" as signed by the Albuquerque Metropolitan Arroyo Flood Control Authority "AMAFCA", the City of Albuquerque "CITY" and LLAVE Construction, Inc. "OWNER" and dated April 13th 2005 in exchange for drainage impact fee credits. In addition, AMAFCA accepted the channel and related infrastructure of the project for maintenance purposes. Finally, the appellant acknowledged, by his signature on the agreement, that under Section 4 d. 6. D., "The Owner may request cash reimbursement for excess credits from the City; however, the City shall not be obligated to reimburse the Owner for any such excess credits".

RECOMMENDATION - (14EPC-40023) (May 8, 2014)

DENIAL of 14EPC-40023, an appeal of a determination by the Impact Fees Administrator regarding a request for a refund and/or reimbursement of drainage excess impact fee credits based on the preceding Proposed Findings 1 through 10.

Tony Loyd Impact Fees Administrator

cc: Bob Keeran, Keeran 1, LLC, 8830 Keeran Ln. NE, Albuquerque, NM 87122 COA, P.O. Box 1293, Albuquerque, NM 87103 COA, Planning Department, 600 2nd St. NW, Albuquerque, NM 87102