

May 28, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON A MITIGATION PAYMENT SYSTEM APPEAL.

SUBJECT: King County Department of Transportation File No. **B97R1827**

BRUCE & DENISE FARRELL
Mitigation Payment System (MPS) Appeal

Location: 21456 – 191st Place SE

Appellants: Bruce & Denise Farrell
11839 SE 274th Street
Kent, WA 98031

Department Sue Osterhoudt
Representative: King County Department of Transportation
Transportation and Planning Division
821 Second Avenue, MS 65
Seattle, Washington 98104

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Deny the appeal
Department's Final:	Deny the appeal
Examiner's Decision:	Deny the appeal

PRELIMINARY MATTERS:

Appeal submitted:	September 12, 1997
Notice of appeal received by Examiner:	March 31, 1998

EXAMINER PROCEEDINGS:

Hearing Opened:	May 4, 1998
Hearing Closed:	May 4, 1998
Hearing Administratively Reopened:	May 5, 1998
Hearing Closed:	May 20, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Traffic impacts mitigations
- Mitigation system (MPS) payment
- Permit expiration
- Impact Fees

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Appeal.** Bruce and Denise Farrell, the “Appellants”, propose to complete the development of a single-family residence located in Mitigation Payment System (“MPS”) Zone 347. The structure is partially complete pursuant to two previous building permits, both of which have expired. The foundation, framework and roof are completed, although the roof appears from photographs in evidence to be substantially deteriorated. The Appellants have purchased the subject property and have applied for a building permit in order to complete the structure as a single-family residence. (Building Permit Application B97R1927.) Based upon its location in MPS Zone 347, the King County Department of Transportation (hereinafter, the “Department”, or “KCDOT”) has assessed a road impact MPS fee of \$1,722.00. Appellants Farrell seek rescission of that fee assessment.
2. **Basis of Appeal.** The Appellants argue the following:
 - A. That the original construction permit was issued before the MPS program existed;
 - B. That the “structure” already exists;
 - C. That no traffic impact will result inasmuch as other lots within the same subdivision are not buildable (due to lack of sewage service);
 - D. That Department of Development and Environmental Services has granted “grandfather rights” to the structure as a basis for reducing the Sensitive Areas buffer standard which would otherwise apply; and that, therefore, the MPS system should do likewise, thereby applying only those [non-existent] fees which existed at the time permits for this structure were first issued.
 - E. That the individuals living in this residence will not load public traffic facilities, even during peak hours.
 - F. That the subject property is located on a cul-de-sac street which will not experience “drive-through” traffic.

3. **Findings.** The following findings are relevant:
 - A. The MPS fee is based on average traffic patterns throughout the assessment area and upon the cost of projects affected by average traffic loads generated and distributed from within that zone. The implementing MPS system ordinance, codified as KCC 14.65 and KCC 14.75, make no special provision for the individual travel characteristics of each householder or family.
 - B. Once completed, the residence will always have the capacity to occupy people who generate vehicle trips, long after the present Appellants have sold the subject property or died.
 - C. The applicable code provides no exemption for “structures” begun under an expired building permit issued before MPS fees were in effect.
 - D. No evidence has been provided which would suggest that the MPS fee is improperly or inaccurately calculated.
 - E. The hearing record contains no evidence of arithmetic or procedural error.
4. **Applicable Code.**
 - A. KCC 14.65.040.B requires the Appellant to prove that the Department:
 - committed an error in
 - calculating the development’s proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule; or
 - granting credit for benefit factors;
 - based the final decision upon incorrect data;
 - gave inadequate consideration to alternative data or mitigations submitted to the Department.
 - B. KCC 14.75.070.A states:

All developers shall pay an MPS fee in accordance with the provisions of this Chapter at the time of the applicable development permit is ready for issuance. The fee paid shall be the amount in effect as of the date of permit application.
 - C. KCC 14.75.040.C authorizes the “Department” to adjust the standard impact fee as set forth in the fee schedules...to consider unusual circumstances in specific cases to ensure that MPS fees are imposed fairly.
5. Except as noted above, the facts and analysis contained in the Department of Transportation Report dated May 4, 1998 are correct and are incorporated here by reference.
6. Any portion of any of the following conclusions which may be construed as a finding is incorporated here by this reference.

CONCLUSIONS:

1. KCC 14.65.040.B establishes the standard of review which the Appellant must meet. The above findings demonstrate the conclusion that the Appellant has failed to meet this standard.
2. KCC 14.75.040.C provides for modification of fees due to "unusual circumstances". However, the circumstances in this case do not satisfy that standard.
3. Any portion of any finding set forth above which may be interpreted as a conclusion is hereby adopted as such.

DECISION:

The appeal is DENIED.

ORDERD this 28th day of May, 1998.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 28th day of May, 1998, to the parties and interested persons shown on the attached list.

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision.

MINUTES OF THE MAY 4, 1998 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF TRANSPORTATION FILE NO. B97R1827 – FARRELL:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Denise Farrell, Appellant, and Sue Osterhoudt, representing the Department.

The following exhibits were offered and entered into the record:

- Exhibit No. 1` Department of Transportation Preliminary Report to the Examiner for the public hearing on May 4, 1998
- Exhibit No. 2 Excerpt from Traffic Mitigation Payment System Program Information brochure
- Exhibit No. 3 King County Residential MPS Fee Schedule, effective October 4, 1993
- Exhibit No. 4 King County MPS Project List, effective October 4, 1993, 2 pages, figures used as basis of MPS fee structure
- Exhibit No. 5 King County MPS Project List, effective October 4, 1993, 1 page showing projects impacted in subject zone
- Exhibit No. 6 Letter dated September 12, 1997, from Appellant to Department
- Exhibit No. 7 Copy of Appeal Form filed October 13, 1997 for Activity No. B97R1827
- Exhibit No. 8 Letter dated September 8, 1997, from Structural Engineering firm re: subject structure

- Exhibit No. 9 Map of subject property and related area streets
- Exhibit No. 10 Map of subject property and related MPS projects
- Exhibit No. 11 Letter dated November 3, 1997, from Appellant to Department
- Exhibit No. 12 Two photographs of subject property

RST:gb

Attachment

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