

July 21, 2009

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

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654
Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Transportation File No. **B08C0028**

WOODINVILLE UNITARIAN UNIVERSALIST CHURCH
Mitigated Payment System (MPS) Fee Appeal

Location: 19020 NE Woodinville-Duvall Road

Appellant: Woodinville Unitarian Universalist Church
represented by **Thomas G. Richards**
1915 Pacific Building
720 Third Avenue
Seattle, Washington 98104-1825
Telephone: (206) 682-7700
Facsimile: (206) 682-0721
Email: tom@przlaw.com

King County: Department of Transportation (KCDOT)
represented by **John Briggs**
King County Prosecuting Attorney's Office
516 – 3rd Avenue, Room W400
Seattle, Washington 98104
Telephone: (206) 296-9015
Facsimile: (206) 296-
Email: john.briggs@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny Appeal
Department's Final Recommendation:	Deny Appeal
Examiner's Decision:	Deny Appeal

EXAMINER PROCEEDINGS:

Hearing opened:	March 25, 2009
Hearing closed:	March 25, 2009

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.

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

FINDINGS OF FACT:

1. Appellant Woodinville Unitarian Universalist Church has applied for a building permit (B08C0028) for the installation of an 896-square foot portable “classroom” building at its existing church complex at 19020 NE Woodinville-Duvall Road.
2. Development in the County is generally required to provide traffic impact mitigation by Title 14 KCC. Included among the concurrency and mitigation requirements are requirements for the payment of a Mitigation Payment System (MPS) fee. [Chapter 14.75 KCC] The fee calculated by Respondent KCDOT for the proposed portable classroom structure is \$1,044.00.
3. The calculation of MPS fees is established in county code in KCC 14.75.050. When development is residential, the fees are those stated in the formally tabulated residential fee schedule set forth in KCC 14.75.040.F. The schedule establishes a proportionate share figure; the proportionate share is then reduced by applying certain benefit factors set forth in Chapter 14.75 KCC to arrive at the proper fee.
4. The proposed development is not residential in nature. Therefore, the calculation of MPS fees defaults to a non-tabulated approach set forth in KCC 14.75.050.B *et. seq.* Those provisions call for KCDOT to calculate the MPS fee by means of a computerized modeling system (the same system used to determine the fee schedules) which determines the proportionate share and then adjusts it by applying the benefit reduction factors noted above. The code requires that the model calculate the proportionate share by determining the number of development-generated peak hour vehicle trips and then making certain additional calculations. [KCC 14.75.050]
5. The modeling system is required to, among other things, “use trip generation rates published by the Institute of Transportation Engineers (ITE)¹ unless:
 - a. actual measurements of the rate of trip generation by similar developments in King County are available,² and the director determines that these local measurements are more accurate; or
 - b. ITE trip generation rates for the proposed development are not available....”[KCC 14.75.050.D.2]
6. A fundamental requirement of the modeling system is that it is to “charge a development for the total traffic entering and exiting the development during the peak hour.” [KCC 14.75.050.D.9]

¹ Published in the ITE Trip Generation Manual.

² Per KCDOT, these measurements would be in the form of some sort of professional traffic study.

7. The ITE trip generation rate for the subject portable classroom, classified per KCDOT for purposes of traffic impact mitigation as a “church” use, is available. Therefore the exceptional circumstance of KCC 14.75.050.D.2.b is not present here.
8. There has been no determination by the KCDOT director in this case that local trip generation measurements are available and are more accurate. The exceptional circumstance of KCC 14.75.050.D.2.a is not present, either.
9. As none of the exceptions are present in this case, the ITE trip generation rate must be employed.
10. The ITE trip generation rate for the church use utilizes as its base the square footage of floor area.
11. The Appellant appeals the MPS fee determination by KCDOT issued in this case, making the following two claims:
 - A. The intended usage of the portable classroom contemplated by the Appellant includes no peak hour use, and therefore would generate no peak hour trips. There is consistently no usage, current or intended, of the property during the weekday a.m. or p.m. peak hours. No services or other functions are scheduled at those times and administrative hours are from 10:00 a.m. to 2:00 p.m. There are also no deliveries to the property; mail delivery is to a post office box. The Appellant also notes that the classroom is not intended to increase church capacity; its use will replace current use of church corridors, the minister’s office and the library as education space.
 - B. The ITE trip generation rate for the subject use is statistically invalid. (The Appellant contends that the pertinent rate study is supported by an insufficient sample size to be statistically significant.)
12. KCDOT responds to Appellant’s claim that no peak hour trips will be generated by the classroom by noting its past consistent interpretation of development trip generation whereby development is presumed to be generic and available for occupancy and use without time-of-day restrictions. The essential principle motivating such operating presumption is that the County has no effective control over time-of-day use of the development, and also has no control over future purchases of the property and/or changes in operation.³
13. There has been no challenge to the actual trip generation calculations using the ITE trip generation rate, and the reductions for pass-by traffic and other benefit factors provided by KCC 14.75.050.

CONCLUSIONS:

1. The Appellant’s disputation of the statistical validity of the ITE trip generation rates is not a claim which may be adjudicated by the Examiner. Utilization of the published ITE trip generation rates is mandated by express provisions of county code, as noted above. Any challenge to the utilization of such rates constitutes a facial challenge of county ordinance, for

³ There was some speculative discussion at hearing of the potential effect of a conditional use permit on trip generation and therefore on mitigation requirements. There is no evidence presented of any effective restriction thereby in this case; regardless, the code-mandated use of the ITE trip generation rates in this case would preempt such consideration.

which relief may be sought in the legislative arena or perhaps on judicial challenge. The Examiner as a quasi-judicial officer is generally without authority to adjudicate a facial challenge to established law.

2. The Examiner accords deference to KCDOT's interpretation of the code and the applicability of the ITE trip generation rates, and its determination that it is not reasonable to discount peak hour trip presumption based on the present or intended limited occupancy of a structure. KCDOT's approach is reasonable in presuming that a structure's square footage is ultimately available to generic, unrestricted use, and therefore generating peak hour trips. [*Mall, Inc. v. City of Seattle*, 108 W.2d 369, 739 P.2d 668 (1987)]
3. The Appellant noted at hearing that the original church structure developed on the property replaced three pre-existing single family residential dwellings, eliminating three presumed peak hour trips with no peak hour trips generated by the church, for a net *decrease* of three peak hour trips. Aside from the fact that the time-of-day argument is not accepted as preempting the code's MPS calculation provisions, the original church construction was a prior development action, procedurally distinct from the present proposed addition of the portable classroom. Any crediting for peak hour trip reduction in the original church development would have had to have been addressed previously in a timely fashion. In addition, the Examiner notes that this argument was not raised in a timely fashion in the instant Notice and Statement of Appeal.
4. KCDOT's calculation of the MPS fee in the instant case has been shown to be properly predicated on a presumption of peak hour trip generation based on the proposed development's floor area square footage, a reasonable determination under the applicable law. It is also properly based on the required ITE trip generation rate.
5. The appeal has not shown the KCDOT MPS fee calculation in this case to be in error. It therefore shall be denied.

DECISION:

The appeal is DENIED.

ORDERED JULY 21, 2009.

Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding mitigation fee appeals. 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. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MARCH 25, 2009, PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION FILE NO. B08C0028

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jeffrey Lee and John Briggs representing the Department and Thomas Richards and James Kimbrough representing the Appellant.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|--|
| Exhibit No. 1 | KCDOT e-mail received November 14, 2008 with 19 pages of attachments, including September 3, 2008 Notice of Appeal |
| Exhibit No. 2 | Copy of the Statement of Appeal received dated January 14, 2009 with ITE Trip Generation Manual excerpts |

PTD:mls
B08C0028 RPT