

**BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND**

In the Matter of the Appeal of)	NO. LAND-2013-00745
)	
)	
Natural and Built Environments, LLC)	Vision 5 Impact Fee Appeal
)	
)	
Of the City's Assessment of Additional)	FINDINGS, CONCLUSIONS,
Impact Fees upon Issuance of the Fourth)	AND DECISION
<u>Revision of Building Permit No. B120125</u>)	

SUMMARY OF DECISION

The Appellant did not demonstrate that the City's April 16, 2013 revision of building permit B120125 and increased impact fees were imposed through a flawed procedure, are outside the scope of impact fee assessment within the Director's authority to implement the impact fee ordinance, or were not supported by a preponderance of the evidence. Because the record provided does not show clear error, the appeal must be **DENIED**.

SUMMARY OF RECORD

Request:

On April 16, 2013, the City of Redmond issued a fourth revision to building permit B120125, which in part added one small refrigerator and one microwave to each of the 96 single resident occupancy units (SROs) of the Vision 5 project. The revision resulted in each SRO being counted as a dwelling unit for impact fee assessment purposes, increasing the impact fees imposed on the project. On April 26, 2013, Natural and Built Environments, LLC (Applicant and Appellant) timely appealed.

Issue on Appeal:

The issue on appeal is whether the Director of the Redmond Planning and Community Development Department correctly interpreted and applied the City's impact fee ordinance when he assessed the contested increased impact fees at the time of Appellant's fourth building permit revision.

Hearing Date:

The City of Redmond Hearing Examiner opened the record for the open record appeal hearing on July 2, 2013. The hearing was continued to July 8, 2013 and completed on July 16, 2013. During the proceedings, the parties agreed to hold the record open for submission of one exhibit (all five complete building permits at Exhibit 22) and legal briefing from counsel for both parties through July 23, 2013, on which date the record closed.

Testimony:

At the open record appeal hearing, the following individuals presented testimony under oath:

For the Appellant:

Jay Janette, Janette Architecture, Planning, and Design
David Markley, Transportation Solutions Inc. (TSI)
Robert Pantley, Natural and Built Environments, LLC, Applicant

For the City:

Robert Odle, Director, Redmond Planning and Community Development Department
Joel Fundt, Redmond Principle Transportation Planner

Exhibits:

At hearing, the following exhibits were offered in evidence:

1. Technical Committee Report to the Hearing Examiner, dated July 2, 2013, with the following attachments:
 - A. Appeal application form, dated April 26, 2013, with attached narrative by Appellant
 - B. Fourth revision to Building Permit B120125
 - C. Floor plans for Vision 5, prepared by Janette Architecture Planning and Design
 - D. First Impact fee calculation form for building permit B120125 (undated)
 - E. Application for building permit B120125 revision, dated April 16, 2013
 - F. Impact Fee Calculation form for fourth revision to B120125
 - G. City of Redmond Invoice number 00002453 for impact fees associated with B120125
 - H. Floor plans for Vision 5 submitted with fourth revision to B120125, dated April 16, 2013
 - I. Travel Survey prepared by TSI, Inc., dated August 27, 2012
 - J. Vicinity Map
 - K. City of Redmond Impact Fee Schedule, revision date January 2013
2. Excerpt from the 2009 International Building Code, section 1208.4, pages 273-274
3. Site Plan Entitlement Notice of Decision Transmittal Letter, dated April 18, 2012, with Notice of Decision, and Tree Exception Request (15 total pages)
4. Level 1 Traffic Impact Analysis, prepared by TSI, dated February 23, 2012
5. Traffic impact fee estimate, prepared by TSI, dated April 12, 2012
6. Travel Survey of Tudor Manor, prepared by TSI, dated August 27, 2013
7. Spreadsheet, prepared by TSI (two pages)
8. Color copies of 12 photographs from existing Vision 5, identified as A through L

9. Excerpt from RZC 21.10.080
10. Excerpt from RZC 21.10.130
11. Memorandum to Design Review Board from Gary Lee, dated November 17, 2011
12. Vision 5 Design Review presentation by Jay Janette, dated April 5, 2012
13. City of Redmond Notice of Application and Optional Determination of Non-Significance, issued March 27, 2012
14. Redmond Municipal Code Chapter 3.10, Impact Fees
15. Definitions excerpted from the Redmond Zoning Code, the Redmond Municipal Code, and the International building Code by Mr. Schneider
16. City of Redmond Multimodal Plan-Based Concurrency System, published June 2009
17. Redmond PARCCs plan – Parks, Art, Recreation, Culture, and Conservation, Chapter 13, Downtown
18. Parks Chapter from the Redmond Comprehensive Plan, pages 10-1 through 10-11
19. Exhibit 1-3, Neighborhoods Map from Parks Chapter from the Redmond Comprehensive Plan, 11x17-inch color copy
20. Transportation Impact Fee Formula, hand written by Joel Pfundt
21. Impact Fee Estimates, prepared by Joel Pfundt
22. All five City of Redmond building permits
 - A. Permit B120125, issued June 18, 2012 (10 pages including conditions)
 - B. Revision #1, August 22, 2012 (3 pages)
 - C. Revision #2, November 9, 2012 (4 pages)
 - D. Revision #3, February 11, 2013 (3 pages)
 - E. Revision #4, April 16, 2013 (2 pages)
23. Chapter 3 of the City of Redmond Transportation Master Plan, "Trends and Conditions", November 2005
24. Chapter 4 of the City of Redmond Transportation Master Plan, "Transportation Objective and Concurrency Management", November 2005
25. Chapter 5A of the City of Redmond Transportation Master Plan, "Pedestrian Program Plan", November 2005

26. Memorandum to Joel Pfundt from Dan Samdahl of Fehr & Peers, re: Transportation impact fee update 2008, dated August 14, 2008
27. "Traffic Impact Fee Based on Proportional Impact", spreadsheet developed by David Markley
28. Cover sheet of the Vision 5 plan set, Sheet G0.01, prepared by Janette Architecture Planning and Design
29. Redmond Zoning Code Chapter 21.20, Affordable Housing
30. Chapter 7 - Parks, City of Redmond Comprehensive Plan
31. Chapter 10 - Recreation, City of Redmond Comprehensive Plan
32. Appellant's Pre-Hearing Brief
33. City's Pre-Hearing Brief
34. Appellant's Post-Hearing Brief
35. City's Post-Hearing Brief

Upon consideration of the argument, testimony, and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Background

1. Developed by Natural and Built Environments (which entity is both Applicant and Appellant), Vision 5 is a new kind of urban residential accommodation provided in a mixed use "live-work-art" building at 8525 - 163rd Court NE in Redmond. Targeting artist residents, the project's purpose is to provide sustainable, affordable residential opportunities in the same building as affordable art studio space and areas to present, display, market, and sell art. The ground floor provides parking and commercial/artist storefront space. Floors two through five comprise 96 individual mini-suite residential units called single residential occupancies or SROs.¹ The SRO units average 200 square feet in area and each has its own bathroom, living area, and sleeping area. The SROs are clustered around eight common kitchens and living rooms, and there are common decks and meeting rooms throughout the project. Built to exceed the Platinum LEED standard, Vision 5 utilizes innovative systems to reduce energy and resource demand, including

¹ Per Redmond Zoning Code (RZC) 21.78A, a Single-Room Occupancy Unit (SRO) is defined as a structure containing single-room living units with small cooking units (independent or common) and other amenities not ordinarily associated with a hotel.

solar hot water, drought-resistant landscaping, triple paned windows, and energy efficient appliances among other features. Built in central downtown Redmond, Vision 5 creates an active, urban pedestrian living experience located a walkable distance from many technology industry employers, shopping, transit, parks, and other services. Vision 5 opened for occupancy at the beginning of June 2013 and by the end of the month 64 units had been leased. *Pantley Testimony; Janette Testimony; Exhibits 11 and 12; Exhibit 8, photographs; Exhibit 32.*

2. SROs are a relatively new land use in Redmond. While they have been incorporated as a land use in the recently adopted Redmond Zoning Code, they have not been incorporated into the Redmond Municipal Code impact fee provisions at Redmond Municipal Code (RMC) Chapter 3.10. Tudor Manor, the pilot SRO project in Redmond, was developed by the Appellant on 166th Avenue in Redmond. Originally proposed as nine separate townhomes in two Tudor style structures, after site plan entitlement the Appellant proposed to develop SROs instead of townhomes with the understanding that the units could be physically reverted to townhomes if there were insufficient demand for the SROs. The City's zoning code did not include SRO provisions at the time. Tudor Manor was certified for occupancy in 2011, with nine townhome units containing either four or five SROs. A LEED Platinum Certified project, Tudor Manor won the Governor's Smart Community Award for 2012. *Odle Testimony; Pantley Testimony; Exhibit 1, page 9; Exhibit 32.*
3. Tudor Manor's impact fees were assessed based on nine multi-family units. Each SRO in Tudor Manor contains a mini refrigerator and microwave, and the Appellant intended to provide the same appliances to the Vision 5 SROs. *Pantley Testimony; Exhibit 1, page 9; Exhibit 32.*
4. Pursuant to the City's impact fee ordinance at RMC 3.10.030.C.1,

“Dwelling unit” means a single unit providing complete, independent living facilities for not more than one family and permitted roomers and boarders, including permanent provisions for living, sleeping, eating, cooking and sanitation. A mobile home, manufactured home, modular home, apartment, condominium, townhouse, single-family attached or detached house, or accessory dwelling unit is considered to be a dwelling unit.

After the Appellant had completed the City's PREP and Site Plan review processes, the City informed the Applicant that Vision 5's SROs with refrigerators and microwaves would be considered dwelling units for the purposes of impact fee calculation, resulting in impact fees based on 96 units rather than eight dwelling units. The Appellant disputed this determination. *Odle Testimony; Pantley Testimony; Exhibit 1, Attachment A; Exhibit 32.*

5. While the disagreement continued, the Appellant submitted the initial Vision 5 building permit application with plans that did not include the refrigerators and microwaves in each unit; however, the electrical plans did show wiring proposed to each SRO located to

and capable of supporting such appliances. The initial Vision 5 building permit (B120125) was issued June 18, 2012 with the following condition (among others):

This mixed use building is designed as 8 dwelling units (IBC dwelling unit - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation) with 96 (single room occupants) SRO. No additional units shall be provided with cooking facilities without a revision to this permit and the assessment of additional impact fees.

Exhibits 22.A; Odle Testimony; Pantley Testimony.

6. The City's 2012 impact fee calculation form, based on RMC Chapter 3.10, enumerates impact fees for single-family residence, multifamily residence, office, retail, and manufacturing uses. *Exhibit 1, Attachments D and F.* Based on the initial application and plans, the City assessed impact fees for an eight unit multi-family residential building in the following amounts:

Fire impact fees of \$178.43 per unit, totaling \$1427.44
Park impact fees of \$2,492.08 per unit, totaling \$19,936.64
School impact fees of \$346.00 per unit, totaling \$2,768.00
Transportation impact fees of \$4,245.58 per unit, totaling \$33,964.64
Total impact fees assessed: \$58,161.72

The Applicant paid these fees and continued discussions with the City regarding providing a mini refrigerator and microwave for each unit. *Exhibit 1, page 3; Exhibit 22.A; Exhibit 1, Attachment C and D; Pantley Testimony; Odle Testimony.*

7. Because SROs are a unique, new land use intended to result in lesser impacts than typical multi-family development, City Staff determined that the multi-family residential use fee at 96 dwelling units would overstate the impacts of the proposal. Consistent with RMC 3.10.120, the Appellant agreed to provide an independent fee calculation study designed in consultation with City Staff based specifically on SRO uses. *Exhibit 1, pages 3-4; Pantley Testimony; Markley Testimony; Odle Testimony.*
8. In February 2012, the Appellant's transportation consultant had prepared a Level 1 traffic study for Vision 5, based on data extrapolated from the Tudor Manor project. The traffic study had concluded that Vision 5 would result in 11 PM peak hour vehicle trips and 19 PM peak hour pedestrian trips. The City accepted this study. *Pfundt Testimony; Exhibit 4.*
9. The Appellant commissioned an independent fee calculation study (the travel survey) by the same transportation consultant. The survey method was agreed to in advance by City Staff. The travel survey was intended to form the basis for adjusting traffic and park impact fees to more accurately reflect the travel characteristics of SRO residents in Redmond. It was filled out by residents at two nearby mini-suite residential projects,

Tudor Manor and Portula'ca, who answered questions relating to time of travel, origination, length, and destination of trips, travel method, and park use. The report concluded that, based on the data gathered, mini-suite residents have a much lower single occupant vehicle use rate (35%) than is typical of Redmond residences (76%) and that they use City parks at a rate of 0.02 park trips per day per unit. *Exhibit 6.*

10. The City of Redmond has adopted a Multimodal Plan-Based Transportation Concurrency system. Transportation impact fees are calculated through an equation that factors in the type of land use, the new vehicle trip rate, a number of person trips per unit, a person trip conversion, and trip length to arrive at a mobility rate, multiplied by the proposed number of units and the fee per unit. The travel survey data resulted in SRO-specific values for some of the equation's factors that are unique to SRO land uses, including a new vehicle trip rate of 0.11, person trips per unit of 0.11, and a trip length of 1.91 miles. The transportation consultant then plugged his new factors into the City's equation and arrived at an estimated transportation impact fee for the 96 SRO units of \$50,159.89. The consultant proposed a park impact fee of zero. *Exhibit 6.*
11. On April 16, 2013, the Appellant submitted the application for a fourth revision to B120125 for the purpose of adding one small refrigerator and one small microwave in each SRO connected to existing outlets and adding a plant shelf in the loft room. *Exhibit 1, Attachments E and H.*
12. In assessing impact fees based on 96 SRO dwelling units, the City accepted and did not question the data accumulated in the travel survey; however, City Transportation Staff did not agree with the factors the Appellant's consultant derived from the data and disputed the consultant's proposed impact fee calculation. Consistent with RMC 3.10.120.D, the City used the independent fee calculation's data in its standard transportation impact fee formula with the factors Staff felt were most appropriate. Impact fees were assessed for the 96 SRO dwelling units as follows:

Fire impact fees of \$178.43 per unit, less \$1427.44, totaling \$15,701.84
Park impact fees of \$121,438.06, less \$19,936.64, totaling \$101,501.42
School impact fees - no change - totaling \$2,768.00
Transportation impact fees of \$142,567.56, less \$33,964.64, total \$108,602.92
Total impact fees due of: \$225,806.18

Exhibit 1, Attachments A (invoice) and F. According to City Staff, the assessed fees represent a reduction in the fee that would have been applied to 96 multi-family dwelling units for transportation from \$413,933.76 to \$142,567.56 (66% reduction) and for parks from \$245,005.44 to \$121,438.06 (50% reduction). *Exhibit 1, page 4; Exhibit 33; Pfundt Testimony.*

13. The Appellant paid the revised fees under protest and filed the instant appeal, asking that the Director's decision to assess additional impact fees be reversed and the additional fees be refunded with interest. *Exhibit 1, Attachment A.*

Arguments Raised on Appeal

14. On appeal, the Appellant contended that the City is wrong as a matter of law that adding microwaves and small refrigerators to each SRO converts them to dwelling units on the following grounds: First, the appliances themselves have no impact on City transportation, park, or fire facilities and no City code regulates small appliances. Second, the City is bound by its original approval of eight dwelling units pursuant to state and federal case law unless the revision results in measurable increased impacts to City facilities. Third, the SROs do not meet the building code's minimum requirements for dwelling units and allowing 96 dwelling units on the property would violate the maximum density allowed under the zoning code. Finally, because Tudor Manor was treated as nine dwelling units for impact fee purposes and because the City didn't inform the Appellant until the end of his site plan entitlement process after he had already obtained financing for Vision 5 in Redmond, the City may not treat the SROs as individual dwelling units for impact fee purposes. *Exhibit 1, Attachment A; Exhibits 32 and 34.*
15. The Appellant contended in the alternative that if the SROs are correctly considered dwelling units for impact fee purposes, the revised impact fees are grossly disproportionate to the actual increased impacts (if any) of providing portable appliances in each unit and as such are disallowed under state and federal law. According to the Appellant, the City has an obligation to interpret the code so that the impact fees assessed are not disproportionate to Vision 5's actual impacts. Relating to traffic impact fees, the Appellant assigned error to the fact that the City apparently weighed vehicle trip and pedestrian trips the same for the purposes impact fee assessment and calculated transportation impact fees using the City as a whole as the "service area". Relating to parks, the Appellant contended that it was error for the City to include the entire City as the service area, that the City's Comprehensive Plan Parks and Recreation chapters show no need for park growth until the year 2030, and that the travel survey showed negligible park use by SRO residents. *Exhibit 1, Attachment A; Exhibit 32; Exhibit 34.*
16. As to whether or not the SROs can be considered individual dwelling units, the Appellant's architect provided testimony regarding design of the project. Jay Janette, the project's architect, asserted that Vision 5 was designed as eight multi-family units, each with a communal kitchen and living area, separated by fire partition walls, connected by a central stair, and provided with two egress paths for each unit, consistent with the City's building code (the 2006 International Building Code as amended by RMC 15.08). In Mr. Janette's professional experience, SROs organized around shared cooking facilities equal one dwelling unit and he reads the building code to consider SROs to be a different thing than a dwelling unit. Mr. Janette contended that the Vision 5 SROs fail to satisfy the building code definition of dwelling unit, which requires a minimum living area of not less than 220 square feet, a separate closet, and separate sinks in kitchen and bathroom, among other requirements. *Janette Testimony; Exhibit 2; Exhibit 1, Attachment A; Exhibit 32.*
17. The Appellant submitted the position that considering the SROs to be 96 dwelling units renders the project inconsistent with zoning development standards. The RZC defines

SROs to contain “small cooking units” and without the appliances in question, they would fail to meet the definition. Noting that the maximum density in the underlying Redmond Town Square Zone is 36 units per acre and that the subject site is one-quarter of an acre, Mr. Janette testified that a maximum of nine dwelling units is allowed on-site. *Janette Testimony; Pantley Testimony.*

18. The Appellant argued that the City has no code authority to regulate appliances such as mini refrigerators and microwaves and that the only change effected by the fourth revision to the building permit was to add small, portable appliances to each unit and one shelf to the loft. Noting that such appliances can be picked up and moved by an average person, the Appellant witnesses asserted that the appliances themselves would have no impacts to the City transportation, fire, or parks facilities. Mr. Janette testified that, in his experience, other cities do not charge impact fees for such appliances. *Pantley Testimony; Janette Testimony; Exhibit 1, Attachment A.*
19. Mr. Janette testified that in the fall of 2011, the initial project plans showed eight total dwelling units, two per floor. He asserted that the characterization as eight multi-family dwelling units was not in question during site design meetings with City Staff. Citing the Washington courts’ decision in *Nykreim*, the Appellant contended that the City is bound by its initial approval of B120125 for eight dwelling units, because the addition of appliances is an insufficient degree of revision to justify adding new conditions or fees to the permit as issued.² *Janette Testimony; Exhibit 1, Attachment A; Exhibit 32.*
20. Assuming the 96 dwelling units are upheld, the Appellant contends that the impact fees assessed on those 96 units are disproportionate to the impacts of those units. According to the travel survey, 35% of SRO residents at Tudor Manor traveled by car, 14% carpooled, 35% walked, 11% bused, and 5% biked. The average distance traveled was 1.91 miles. The maximum occupancy in each SRO is anticipated to be one person. The Appellant's transportation consultant David Markley argued that transportation impact fees are appropriately based on exclusively vehicle trips because vehicle infrastructure is the most expensive and where most demand occurs. Reviewing the impact fee schedule, multi-family residential is the appropriate use category. Based on the multi-family impact fee and other City of Redmond standard factors, transportation impact fees for 96 units would be \$367,839.23. The industry standard ITE manual assigns multi-family units 6.2 vehicle trips per unit in the PM peak hour, while the travel survey revealed that SRO units at Tudor Manor resulted in 0.11 trips per unit in the PM peak hour. Using travel survey data, Mr. Markley suggested a transportation impact fee estimate based on the projected new PM peak hour vehicle trips totaling \$50,159.89. In his professional opinion, it is the most accurate reflection of Vision 5's transportation impacts. *Exhibit 6; Markley Testimony.*
21. Adopting some of the data from the Appellant's travel survey, the City calculated the 96 SRO dwelling unit transportation impacts, including both vehicle and pedestrian trips, and arrived at a total of \$142,56756. The Appellant's consultant assigned error to this

² *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002).

calculation on the basis that it apparently gives the same weight (impact) to each pedestrian trip as is given to each vehicle trip. Mr. Markley testified that in his professional opinion, to do so is not consistent with industry standard transportation impact analysis and is not consistent with previous City of Redmond practice. The Appellant argued that the City's own multimodal plan-based concurrency document (at page 15, Table 1) forecasts zero percent growth in pedestrian trips between 2005 and 2022. *Markley Testimony; Exhibit 6; Schneider Argument.*

22. Regarding park impacts, the Appellant contended that the addition of the appliances has no effect on park use or on park levels of service. Data from the travel survey indicates that existing SRO residents use parks at the rate of 0.02 park trips per SRO unit per day. Because of this low rate of use, the travel survey/impact fee estimate proposed a park impact fee of zero. *Exhibit 6; Pantley Testimony.*
23. The Appellant contended that the revised impacts fees are clearly erroneous because they are inconsistent with the City's goals and policies of encouraging the provision of affordable housing for people who otherwise are priced out of the City. In calculating impact fees, the Appellant argued the City has an obligation note the uniqueness of Vision 5, specifically that the project was located, designed, and built to have a limited environmental footprint and to promote an affordable way of living in Redmond with much less impact on City facilities than traditional residential development. *Exhibit 32; Exhibit 1, Attachment A.*

City's Response to Appeal Issues

24. The City contended that when it assessed impact fees based on eight multi-family dwelling units, the resulting fees reflected an under-assessment of Vision 5's actual impacts. In his testimony, Robert Odle, Director of the Redmond Planning and Community Development Department, noted the same under-assessment had occurred at Tudor Manor. Without the microwave oven and refrigerator, each SRO unit did not meet the definition of dwelling unit, because each did not make "provisions for cooking." The proposed appliances, while portable, are intended to be permanently provided and would remain in each unit after a given tenant moved out, as part of the amenities offered.³ As revised, each SRO unit made "provisions for cooking", thus satisfying the definition of a dwelling unit under the impact fee ordinance. The City did not require the Appellant to add the appliances to the SRO units; it was a business decision on the part of the developer who knew before submitting the building permit revision application would trigger additional impact fees. *Exhibit 1, pages 6-7; Exhibit 1, page 6; Odle Testimony; Exhibit 35; Exhibit 22.A.*
25. Per RMC 3.10.080, if the type of use or development activity is not specified on the impact fee schedule, the Code Administrator (Director Odle) uses the fees applicable to the most comparable type of land use on the fee schedule. The Director determined that multi-family residential is the most comparable land use in the fee schedule to the Vision 5 project. However, multi-family units are typically considered as having two residents

³ *Janette Testimony.*

per unit, and the Appellant had indicated that the SROs would be limited to one resident per unit. The unique nature of the SRO was the basis for accepting an independent fee calculation study from the Appellant, consistent with RMC 3.10.120. *Odle Testimony; Pfundt Testimony; Exhibit 1, page 6; Exhibit 35.*

26. The City argued that Appellant's contention that microwave ovens and refrigerators have no effect on transportation, fire, or parks misses the point, asserting that full kitchens would also have no effect on City facilities. RMC Chapter 3.10 bases fees on number of dwelling units. The City noted that Washington courts have previously acknowledged facilities as portable as hot plates can satisfy the requirement of permanent provision for cooking.⁴ *Exhibit 1, page 7; Exhibit 35.*
27. In response to the assertion that impact fees at Tudor Manor were based on nine dwelling units, City Staff asserted that there were no assurances given to the Appellant that the City would calculate impact fees for Vision 5 in the same way. The City argued that any reliance by the Appellant on the Tudor Manor fee assessment method was unjustified. *Exhibit 1, page 9; Odle Testimony.*
28. According to City Transportation Staff, the City's transportation master plan (TMP), its plan-based concurrency system, and its impact fee system are all based on multimodal transportation analysis in which sidewalks and pedestrian programs are key components. Redmond and other local cities are seeking to improve overall transportation by shifting from a management system that focuses solely on vehicle travel to one that bases planning on multimodal improvements. Redmond's most recently adopted TMP system looks more globally at how entire the transportation system is implemented in terms of people moving capacity and bases improvements on a 20-year plan revolving around a travel demand model focused on "person miles of travel" or "mobility units." "Person miles of travel" means one person traveling one mile regardless of mode - automobile, carpool, walking, bike, transit - because it is important to consider all modes in planning to move people safely and efficiently through the city. In its TMP and concurrency system, Redmond established the goal of upgrading its entire pedestrian infrastructure and adopted levels of service (LOS) in the commercial and mixed use areas of "pedestrian supportive" and "pedestrian tolerant" for all other areas within the City.⁵ According to this multimodal system, each pedestrian trip (counted as person miles of travel) on City sidewalks degrades the LOS. Vision 5 will contribute pedestrians to the City's pedestrian transportation system. *Pfundt Testimony; Exhibits 16, 23, 24, 25, and 26; Exhibit 35.*
29. The City accepted the data from the Appellant's travel survey, but rejected its impact fee estimate because it disagreed with some of the factors used in the calculation by the report's author. The City accepted the survey's trip number and trip length data. The formula used to calculate fees based on 96 SROs was (person trips per unit) multiplied by (trip length) multiplied by (number of units) multiplied by (cost per person mile of

⁴ The City cited *Seattle v. Koh*, 26 Wn. App. 708 (1980).

⁵ Vision 5 is in a commercial and mixed use area.

travel), resulting in the transportation impact fee per unit. The main factor from the travel survey's fee estimate with which the City took issue was "person trips per unit". "Person trips per unit" is a measurement that counts all trips in all travel modes, including pedestrian, and includes the fact that some vehicles have more than one person in them. The travel survey fee estimate left out pedestrian trips and counted only vehicle trips, which is inconsistent with the City's adopted multimodal TMP and concurrency system. *Pfundt Testimony; Exhibit 6; Exhibit 21; Markley Testimony.*

30. Transportation Engineering Staff Joel Pfundt testified that in order to maintain concurrency, the City has to fund and build projects from the transportation facility plan that add mobility units/person miles of travel capacity, moving Redmond closer to its ultimate goal of a more pedestrian supportive environment. If not required to be built as part of new growth, the existing LOS would reduce. In Mr. Pfundt's opinion, the City's fee calculation method results in proportionate impact fees because it takes into account the mobility units each development consumes within the City's 20-year transportation plan. In arriving at the impact fees for Vision 5, trips were weighted by the number of each type, which means the pedestrian trips and vehicle trips were not really counted the same. The transportation impact fees were assessed based on all trips, regardless of mode. The dollar amount assessed for pedestrian and vehicle trips is the same but the number and length of each kind of trip is included in the calculation. *Pfundt Testimony;*
31. Specifically addressing the Appellant's questions relating to the multimodal plan-based concurrency document's (Exhibit 16) Table 1 at page 15, Mr. Pfundt asserted that the zero in the pedestrian line of the 2005-2022 person miles of travel chart depicts that zero percent of the anticipated growth would be in pedestrian trips, not that there would be zero new pedestrian trips. However, he noted that the models in the concurrency plan document understate growth in pedestrian and bike traffic. The City's goals and policies promote growth in the number of non-car travelers, as is reflected in Figure 10 on page 18 of the same document, which shows that 7% of the budget of the transportation facilities plan is allocated to pedestrian facilities. Also, Mr. Pfundt noted that some portion of the multimodal budget segment is also spent on pedestrian and bicycle facilities, as in road widening projects that provide sidewalks and bike lanes. *Exhibit 16; Pfundt Testimony.*
32. Pursuant to RMC 3.10.040, for purposes of the park, fire, and transportation impact fees, all land within the boundaries of the City is considered a single service area. Application of the single City-wide service area was not unique to Vision 5. The City argued that establishing a single service area for all land within city boundaries has been upheld by the Washington State Supreme Court in the *Drebick* case.⁶ *Exhibit 1, pages 8-9; Exhibit 33; Exhibit 35.* Regarding the reasonableness of including all of the City of Redmond within a single service area for impact fee calculation, City Staff noted that the City is roughly square in shape. From Vision 5, in approximately the center of the Redmond, it is approximately two miles to the City limits in any direction. According to the Appellant's travel survey, the average trip length forecast for Vision 5 residents is 1.9

⁶ *City of Olympia v. Drebick*, 156 Wn.2d 289, 126 P.3d 802 (2006).

miles. Whatever direction Vision 5 residents travel by any mode, they will be using City transportation facilities for the majority of their trips. *Pfundt Testimony.*

33. The City's park impact fees are based on its Comprehensive Park Plan, in which parks are planned by neighborhood. The City has established a level of service (LOS) for parks, the intent of which is to make park facilities available to the total population regardless of use patterns. Park impact fees are assessed based on number of dwelling units in the service area and do not take into account the actual usage of parks. From the original capital parks plan, completed projects are removed, new needed projects are added in, growth is updated, costs of land acquisition and park construction are adjusted, and about every two years fees are adjusted. *Odle Testimony; Exhibits 17 and 18.*
34. In response to the contention that Vision 5 residents are forecasted to use parks to a negligible extent based on the travel survey, the City noted that frequency of use is not an element in calculating park impact fees. Redmond's City-wide service area and LOS for parks are based on a ratio of parks facilities per person, not per park user. Specifically for parks, the City's impact fee ordinance assumes 1.96 residents per multi-family unit. Accepting the use-specific data that SROs are likely to have only one resident per unit, the City adjusted its impact fee by roughly half. Assessed as eight multi-family units, the initial Vision 5 park impact fees addressed only 16 residents. *Exhibit 34; Odle Testimony.*
35. In Redmond, park impact fees are not earmarked for specific projects based on the location of the development paying the fees. However, the Director testified that the Redmond Central Connector and Downtown Parks are both park facilities currently being financed and under construction. He surmised that the Vision 5 park impact fees would likely be used for these and other downtown parks projects currently underway and noted that the City's predominant park investments are in the downtown, where Vision 5 residents are forecasted to spend the majority of their time. *Odle Testimony.*
36. Regarding the Appellant's assertions that the fees are not proportionate, the Director testified that RMC 3.10.090 references RCW 82.02 which requires reasonable proportionality between fees and impacts. He stated that when the work was done to come up with impact fees, proportionality was factored in. In the instant case, fees were initially based on multi-family units. However, at 96 multi-family units, the Director felt the fees overstated the project's impacts. The Director contended that in relying on Appellant-provided information indicating that each SRO would have one resident and accepting the data from the travel survey, the City took appropriate steps to ensure the impact fees assessed were proportionate. *Odle Testimony.*
37. Impact fees for fire were not reduced as a result of the travel survey because the Appellant's independent fee calculation study did not provide data showing how SRO dwelling units differed in impact from other residential dwelling uses for fire purposes. School impact fees were based on a specific request from the School District and were not challenged in this appeal. *Odle Testimony; Pantley Testimony; Pfundt Testimony.*

38. In response to the argument that the revised impact fees are inconsistent with the City's goals and policies encouraging affordable housing, the City contended that its support of SRO developments promotes affordable housing and noted that no goal or policy requires the City to forgo collecting fairly calculated impact fees from any developer or to discount impact fees to discount impact fees to promote affordability. *Exhibit 1, page 10.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is authorized to conduct open record appeal hearings and issue decisions on appeals from Type I permit decisions, including Administrator determinations regarding impact fee assessment, pursuant to Redmond Zoning Code 21.76.050.B, 21.76.050.F, and 21.76.060.D.4.

Criteria for Review of the Appeal:

Appeals of Type I decisions are made to the Hearing Examiner in an open record hearing. Within 10 business days after the close of the record, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner shall accord substantial weight to the decision of the Department Director. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type I decision is not supported by a preponderance of the evidence or was clearly erroneous. *RZC 21.76.060.F; RZC 21.76.060.D.4; RZC 21.76.060.I.4.*

Conclusions Based on Findings:

1. At the level of the instant quasi-judicial hearing body, the case essentially distills into one question: did the Planning and Community Development Department Director correctly interpret and apply the City's impact fee ordinance when he assessed the contested increased impact fees at the time of Appellant's fourth building permit revision?
2. Because SROs are a relatively new land use in Redmond and not called out specifically in the impact fee ordinance, the question as to whether they are incorporated into multi-family dwelling units or counted individually as dwelling units for impact fee assessment requires code interpretation. The RZC requires the Examiner to accord substantial weight to the Department Director's decision in Type I applications, mandating deference to the Director's expertise. *RZC 21.76.060.I.4.* In the context of according deference to the decision of an administrative agency, Washington courts have held that an agency's decisions will not be overturned unless evidence in the record shows the agency has "engaged in an unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; ... [or] [t]he agency has erroneously interpreted or applied the law." *Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Board*, 100 Wn.App. 341, 363 (2000). An action is clearly erroneous when it leaves the reviewing [authority] with "the definite and firm conviction that a mistake has been committed." *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 894 (2004). When applying the clearly erroneous standard, the Hearing Examiner must not substitute

his own judgment for the judgment of the agency. *See Buechel v. Department of Ecology, 125 Wn.2d 196 (1994).*

3. Pursuant to the impact fee ordinance at RMC 3.10.030.C.1, “dwelling unit” means a single unit providing complete, independent living facilities for not more than one family and permitted roomers and boarders, including permanent provisions for living, sleeping, eating, cooking and sanitation. For the purpose of assessing impact fees, the Director was not wrong to apply the impact fee ordinance definition of dwelling unit to the exclusion of other definitions.⁷ With the refrigerators and microwaves supplied by the building owner to tenants intended to remain available to future tenants after lease termination, the Director concluded that provision of these amenities constituted "permanent provision for cooking." Given the required deference to the Director’s interpretation, with a bed, chair and table, a bathroom, at least one sink (whether in the bathroom or not), and a small refrigerator and microwave, it is arguably true that the Vision 5 SROs contain all required elements of the impact fee ordinance definition of dwelling unit.

The fact that the SROs do not satisfy the building code definition of dwelling unit is irrelevant for impact fee assessment purposes. Pursuant to RZC 21.10.080, Table 21.10.080C, SROs are not subject to a maximum density; however, even if they were, the determination they are dwelling units under the impact fee ordinance does not render them dwelling units for other ordinances with differing definitions. With regard Tudor Manor, the Director stated that the impact fees assessed were inadequate to mitigate the project's impacts consistent with the intent of RMC Chapter 3.10. The fact that Tudor Manor, the City's first SRO project, was assessed impact fees based on the number of communal kitchens and not on SROs as individual dwelling units does not preclude the Director from making a different determination in the present case, the second SRO project in Redmond.⁸ The Appellant's building permit revision application triggered the assessment of additional fees. The Appellant had been on notice since before issuance of the original building permit that adding the refrigerators and microwaves to the plans would result in the assessment of additional impact fees. Nothing in RMC Chapter 3.10 nor any provision of state law argued by the Appellant prohibits the City from recalculating impact fees when a developer revises a project after issuance of a building permit. *Findings 2, 4, 6, 7, 9, 11, 12, 20, 24, 25, 26, 27,28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.*

⁷ Where an ordinance defines specific terms within an ordinance, the definitions control the meaning of those terms. *HJS Development, Inc. v. Pierce County*, 148 Wn.2d 451, 472, 61 P.3d 1141 (2003). When a general and a specific ordinance cover the same subject matter, the specific controls over the general to the extent that the two conflict. *State ex rel. Lige & Wm. B. Dickson Co. v. Pierce County*, 65 Wn. App. 614, 620, 829 P.2d 217 (1992).

⁸ Misunderstanding or misinterpretation of a statute or ordinance by those charged with its enforcement does not alter its meaning or create a substitute enactment. Instead, both the agency and affected landowners are bound by the ordinance as written - not by how the ordinance has been applied in the past. *Fabon Point Neighbors v. City of Mercer Island*, 102 Wn. App. 775, 11 P.3d 322 (2000).

4. Because SROs are a new land use not called out specifically in the impact fee ordinance, the question as to the rate at which each unit will be assessed impact fees requires code interpretation. In this question as well, the Examiner is required to accord substantial weight to the Department Director's decision. *RZC 21.76.060.I.4*. Exercising discretion expressly authorized at RMC 3.10.120, the Director accepted an independent fee calculation study from the Appellant for the purpose of assessing the impacts of SROs. Consistent with the authority conferred at RMC 3.10.120.D, when the acceptable independent fee calculation study was presented, the Director adjusted the fee to that appropriate to the particular development activity. The City accepted without question the number of trips, the number of each kind of trip, and the average trip length from the Appellant's independent fee calculation study. The City also accepted the Appellant's assertion that each SRO would be inhabited by a maximum of one resident. Based on these data unique to SROs provided by the Appellant, the City calculated fees for 96 SRO dwelling units. The SRO residents will use the streets, sidewalks, and parks in and around downtown Redmond, adding pressure on their service capacities. Despite the Appellant's several calculations with different resulting fee amounts, the record presented has not demonstrated error in the calculation of impact fees by the City. If the City has never previously used this specific equation or method of calculation, it is not surprising given this is only the second SRO project in Redmond and the first designated as SRO from its inception. *Findings 2, 4, 6, 7, 9, 11, 12, 20, 24, 25, 26, 27,28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.*

5. Evidence and arguments put forth by the Appellant have not demonstrated clear error in the City's application of its impact fee ordinance provisions to the fourth revision of building permit B120125. To the extent that the appeal challenges the City's adopted impact fee ordinance, Transportation Master Plan, multimodal plan-based concurrency system, or any portion of the City's Comprehensive Plan Parks or Recreation plans as violative of RCW 82.02.020 *et seq* or on constitutional or other grounds, such questions are beyond the scope of the instant hearing body's authority.⁹

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⁹ *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984).

DECISION

Based on the foregoing findings and conclusions, the Appellant did not demonstrate that the City's April 16, 2013 revised impact fees, trigger by application for building permit revision, were imposed through a flawed procedure, are outside the scope of impact fee assessment within the Director's authority, or were not supported by a preponderance of the evidence. Because the record provided does not show clear error, the appeal must be **DENIED**.

Decided August 6, 2013.

By:



Sharon A. Rice
City of Redmond Hearing Examiner

Note: Pursuant to RZC 21.76.060.M, Type I appeal decisions of the Hearing Examiner may be appealed to the City Council in a closed record appeal proceeding as provided in RZC 21.76.060.M. Any party with standing (detailed at RZC 21.76.060.M.2.a) may appeal this decision by filing the appropriate appeal form along with the required fee no later than 5:00 pm 10 business days following the expiration of the reconsideration period. See RZC 21.76.060.M for further detail on appeal requirements.