

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 4/21/2015	(3) CONTACT/PHONE Glenn Marshall, Development Services Engineer (805) 781-5269	
(4) SUBJECT Hearing to consider an appeal of the South County Area 1 Road Improvement Fees by Mr. John Will, Pinetree Development. District 4.			
(5) RECOMMENDED ACTION It is recommended that the Board deny the appeal to reduce the South County Area 1 Road Improvement Fees for all building permits.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent { } Presentation {X} Hearing (Time Est. 15 min) { } Board Business (Time Est.____)			
(11) EXECUTED DOCUMENTS { } Resolutions { } Contracts { } Ordinances {X} N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5 Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY {X} N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW David E. Grim			
(18) SUPERVISOR DISTRICT(S) District 4			

Reference: 15APR21-H-1

County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works
Glenn Marshall, Development Services Engineer

VIA: Dave Flynn, Deputy Director of Public Works

DATE: 4/21/2015

SUBJECT: Hearing to consider an appeal of the South County Area 1 Road Improvement Fees by Mr. John Will, Pinetree Development. District 4.

RECOMMENDATION

It is recommended that the Board deny the appeal to reduce the South County Area 1 Road Improvement Fees for all building permits.

DISCUSSION

Mr. John Will, Managing Member of Pinetree Development, LLC (Appellant) is in the process of constructing up to seven single family residences on individual parcels fronting Mads Place, located off Oakglen Avenue south of Tefft Street in the community of Nipomo (see Vicinity Map). The parcels to be developed are within the South County Road Improvement Fee Area 1 and are subject to paying the current fee of \$12,011 per single family residential unit prior to issuance of building permits (see Attachment 1). The Appellant has filed an appeal requesting the Board reduce the road improvement fee for each of his building permits to \$1,875 per unit (see Attachment 2).

History

The building permits under consideration are associated with Tract 2516, a nine lot subdivision that received final map approval from the Board on June 3, 2008 after posting a performance bond. On October 16, 2012, all conditioned improvements were satisfied and the bond was exonerated. The required public improvements included access, utility, and drainage to serve each new parcel as required for orderly development in accordance with Title 21.03 (Design Criteria) of the County's Subdivision Ordinance. No offsite improvements were required.

Tract 2516 was the third attempt by the landowners, Mads & Mae Munk, for the same subdivision following two previously approved tentative maps, Tract 1755 and Tract 2326, but both expired prior to recordation (Title 21.06.072). Because all three tentative maps were identical the negative declaration issued under the California Environmental Quality Act (CEQA) on June 26, 1992 for the initial application (Tract 1755) remained applicable to all subsequent tentative maps.

Prior to recordation of the final map for Tract 2516, there were two existing residences. One is believed to have been constructed prior to the South County Road Improvement Fee program. The second was completed in August of 1993 and paid the then current road improvement fee of \$2,712. It also completed the fronting Oakglen Avenue curb, gutter and sidewalk improvements in accordance with County Ordinance (Title 22). There are seven remaining vacant parcels within Tract 2516 available for residential single family development.

Of the nine residential parcels associated with Tract 2516, two were previously developed, three have building permits issued, and four have building permit applications under review. The Appellant recently paid \$36,033 in road fees on the three permits that have been issued for construction. The following table summarizes the status of building permits on each parcel of Tract 2516.

Parcel No.	Building Permit No.	Permit Status	RIF Paid
1	n/a	n/a, exist residence	
2	87930	Finald 1993	\$2,712
3	PMT2014-02287	Application submitted	
4	PMT2014-01444	Issued for construction	\$12,011
5	PMT2014-01449	Issued for construction	\$12,011
6	PMT2014-01624	Application submitted	
7	PMT2014-01460	Issued for construction	\$12,011
8	PMT2014-01632	Application submitted	
9	PMT2014-01625	Application submitted	

Appeal Issues

In the letter provided as Attachment 2, Mr. Will raises the following comments, which are paraphrased below, along with staff's response:

Issue 1: At no time during the subdivision process did the Department of Public Works inform the Appellant of the road improvement fees or make any attempt to collect the fee in accordance with the Ordinance. The fee only came to our attention when we applied for the building permits.

Staff Response:

1. *It is reasonable to expect that the Appellant should have been aware of the Road Improvement Fees associated with building permits for the following reasons:*
 - a. *The Appellant, Mr. John Will, was identified as the applicant's agent on two of the three preliminary tract map applications (Tracts 2516 and 2326).*
 - b. *The "Traffic" section of the June 26, 1992 Negative Declaration (approved for Tract 1755 and subsequent Tracts 2326 and 2516) identifies the mitigation for project traffic impact is "... this and other proposed subdivisions are currently subject to a cumulative traffic fee for county road improvements identified as necessary at build out in the 1987 Nipomo Circulation Study... This study is amended/reviewed annually and the fees may be adjusted to include additional improvements as needed." The developer signed their acknowledgement of the original Negative Declaration during the subdivision process and it was a part of the record for approval of the subsequent tentative maps.*

- c. *During the Tract 1755 subdivision application process, the Munk's constructed a single family residence and paid the then current road improvement fee.*
2. *County staff makes a concerted effort to ensure that all persons seeking development in the County are made aware of the road improvement fee areas early in the application process. Information regarding our road improvement fee program continues to be available with:*
 - a. *Department of Planning and Building – A parcel flag in the “Permit View” GIS program; on the permit application package entitled “Building Project Checklist”; and front counter staff.*
 - b. *Department of Public Works – On our website and at our front counter; letters sent initially to each building permit applicant; and annually active permit holders are notified of significant road fee area adjustments.*

The appellant was notified by letter of the RIF for each permit as listed below.

- *12/01/2014 for PMT2014-0444*
- *12/01/2014 for PMT2014-01449*
- *12/08/2014 for PMT2014-01460*
- *12/17/2014 for PMT2014-01624*
- *12/17/2014 for PMT2014-01625*
- *12/17/2014 for PMT2014-01632*
- *3/16/2015 for PMT2014-02287*

3. *County Ordinance 2379 (Title 13.01) requires that road improvement fees be collected prior to issuance of building permits for development of this type. See below staff response to Issue 2.*

Issue 2: We believe there are sufficient grounds for the appeal under County Codes 13.01.02(b)(2)(A) that states fee payment prior to issuance of permit or approval for the new development; and 22.80.030 that defines County permit.

Staff Response:

1. *All road improvement fees are established by Ordinance No. 2379 and codified in Title 13.01 – Road Improvement Fee, of the County Code. Timing for payment of the road improvement fee is established each year by resolution, as permitted by Section 66007 of the Government Code. Since adoption of the South County Road Improvement Fee program in early 1989, and continuing through the latest adopted Resolution No. 2014-380 (December 16, 2014), the collection of fees has been long established as “paid prior to the issuance of a building permit for the new development.”*
2. *Section 13.01.050 of the San Luis Obispo County Code states that an adjustment or waiver of the fee may be granted, “based on the absence of any reasonable relationship or nexus between the traffic-generating impacts of that new development, and either the amount of the fee imposed or the type of road facilities or improvements to be financed by the fee.” The appellant has not provided a basis for why the mitigation fee should not be imposed. Any waiver or adjustment of the fee needs to have findings by your Board to state the basis for the action.*

Issue 3: We are requesting to pay the road improvement fee that should have been paid at the time of installing the project improvements back in 1998.

Staff Response:

1. *The Appellant is indirectly requesting your Board to approve a vesting privilege associated with the initial Tract 1755. Any vesting privileges for Tract 1755 and the subsequent Tract 2326 expired with the expiration of these two tentative maps. Preliminary tract map 2516 vested with its approval on November 16, 2004. However, vesting tentative subdivision maps which “vested” anytime since the original adoption of the fees (early 1989 for the South County area) actually vested into the road improvement fee ordinance which includes the provision for annual updates and potential increases. Those provisions have consistently required that the fee be paid when building permits are issued. By Ordinance, the Appellant is required to pay the current fee amount.*
2. *By signing the tentative map’s Negative Declaration the Appellant (agent to the owner) acknowledged the project was subject to the South County Road Improvement Fee, and that the fee may be adjusted as needed.*

South County Road Improvement Fee Area Appeal History

Since 1991, our records show 34 road improvement fee appeals within the South County Road Fee Areas 1 & 2 were heard by your Board. The following summarizes your Board’s actions on each of these appeals:

Category	No. of Appeals	Board Action			RIF Losses
		Adjusted	Waived	Denied	
Residential	26	3	1	22	-\$38,625
Industrial	1	1	-	-	-\$7,162
Commercial	4	3	1	-	-\$99,998
Church	3	1	1	1	-\$22,591
	34	5	3	24	\$168,376

The loss of road improvement fee revenues towards implementation of the transportation mitigation program must be offset with additional external funding and is not passed along to other building permit fee costs.

The South County Circulation Study establishes the reasonable relationship, or nexus, required for the imposition of fees within its study area. The most recent update of the Study was adopted by your Board on December 16, 2014, and the fees recommended in that update became effective February 16, 2015. The current fee for South County Area 1 is \$12,011 per single family residential unit.

All new developments or changes in use of existing development within the area will contribute to the need for road and other transportation improvements as defined in the approved circulation study and Capital Improvement Program. The improvement program is designed to provide the necessary

capacity, in the network of arterial and collector streets, to meet the County's established level of service criteria. The Road Improvement Fee was designed to apportion the cost of the needed improvements to all development, based on the amount of traffic generated.

OTHER AGENCY INVOLVEMENT/IMPACT

The building permits are being processed by the Department of Planning and Building.

FINANCIAL CONSIDERATIONS

The South County Circulation Study establishes a Capital Improvement Program identifying road improvements necessary to support new development. Supporting this appeal may result in substantial loss of road improvement fee revenues to fund future South County Area projects identified in the Update. South County Road Improvement Fee Area 1 has an obligation to pay back a loan from Fee Area 2 which was required to construct the Willow Road Interchange.

A fee of \$497 was paid by the applicant to process this appeal request. This fee is applied to offset the time spent by County staff to prepare this report and present this item to the Board of Supervisors at public hearing.

RESULTS

The results of considering this appeal will include your determination on how costs are allocated to new development, which will promote a well-governed community.

c: Pinetree Development, LLC, Attn: John Will, 2640 Industrial Parkway, Suite 100, Santa Maria, CA 93455

Reference: 15APR21-H-1

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ATTACHMENTS

1. Vicinity Map
2. Attachment 1: South County Road Improvement Fee Area
3. Attachment 2: Appellant's Letter