

April 8, 2019

ELECTRONIC DELIVERY

Ms. Kari Kent, Assistant City Manager
City of Mesa
20 E Main Street
Mesa, Arizona 85201-1466

**Re: Appeal Non-Residential Fire & Public Safety Impact Fee(s) for
RV Renovators - 8855 E Main Street - PMT18-07818**

Dear Kari:

On behalf of RV Renovators and Mr. Monty Germaine, owner and developer of the above-referenced property, we hereby submit this formal appeal of the City of Mesa's determination as expressed in a letter from Ms. Kari Kent date March 11, 2019. Said letter and determination denied our February 25, 2019 request for relief from the non-residential fire and public safety development impact fees currently being imposed by the City of Mesa for the 98,628 s.f. of covered RV/Boat parking spaces proposed.

AUTHORITY

As established in A.R.S. 9-436.05, the City of Mesa is allowed to impose development fees to offset costs associated with providing necessary public services to a development. Pursuant to A.R.S. 9-436.05, Mesa is subject to specific requirements in order to assess any development fees. In addition to A.R.S. 9-436.05, Mesa City Code Section 5 Chapter 17 builds upon the state enabling legislation to further define the authority, applicability, and intent of Mesa's imposition of development impact fees.

BACKGROUND

Towards the end of November 2018, Mr. Germaine's bank requested an estimate of our permit fees. Our architect asked staff for assistance in estimating those fees. Staff responded quickly and their estimate appropriately included development impact fees. Mr. Germaine was surprised at the amount estimated for the non-residential fire and public safety development impact fees. After a quick review of our construction documents, we concluded that square footage for the covered RV/Boat parking spaces had been incorrectly included with the square footage for actual buildings in the calculation of the development impact fees. We reached out to staff and requested that they correct the estimate by eliminating the covered RV spaces. We were informed that it was Mesa's policy to charge non-residential fire and public safety development impact fees for covered RV/Boat parking spaces. In staff's opinion, there had been no error in the estimate provided.

We further inquired as to why Mesa was charging for, what is in essence, covered parking? We were told this was City policy. We asked if Mesa was charging impact fees for covered parking spaces at office building developments. We were told no, that Mesa did not charge for covered parking spaces at office buildings. When asked for help in understanding the difference between covered RV parking spaces and covered office building parking spaces, staff said it was because the covered RV parking spaces charged to park/store a vehicle. We explained to staff that many office buildings in Mesa have a combination of covered and uncovered parking spaces and that tenants are often charged higher monthly lease fees specifically for covered parking.

A few days after our initial conversation with staff, we asked a follow-up question. If we removed all the proposed covers for the RV parking spaces shown on our plans, would we be assessed non-residential fire and public safety development impact fees? We were told no, that no such fees would be imposed. Staff further explained that the cover and the storage fee, in combination, is what triggers the need to assess non-residential fire and public safety development impact fees.

On December 5, 2018, an appeal was sent to the City Attorney's office regarding Mesa's imposition of non-residential fire and public safety development impact fees for the covered RV spaces at this development. We did not receive an official determination regarding our December 5th appeal until February 4th, 2019. Said determination denied our appeal. Mr. Germaine reasonably concluded that if the issues involved were directly and specifically addressed by Mesa City Code 5-17 and A.R.S. 9-436.05, our appeal would be summarily denied in short order, not two months.

On February 25, 2019, we filed another formal appeal with the City Clerk's office. Pursuant to Mesa City Code 5-17, the Assistant City Manager (Ms. Kari Kent) was assigned to review our appeal and provide a determination. Said determination from Ms. Kent was received on March 11, 2019 - another denial.

Pursuant to Mesa City Code 5-17-10(I), Ms. Kent's determination may be appealed to a City Council committee designated by the City who will hear the appeal. Said appeal must include a written notice that contains an explanation of why Mr. Germaine feels that the determination was in error. The written notice of appeal must be filed with the City Clerk within thirty (30) days after receiving Ms. Kent's determination. Thus this appeal is filed with the City Clerk on April 8, 2019.

EXPLANATION & BASIS OF APPEAL

Mesa's two formal determinations sent us on February 25, 2019 and March 11, 2019 generally share the same primary reasons for denial. The rationale expressed is rooted in Mesa City Code 5-17, fire personnel opinion, and similar practices of a few other Arizona municipalities. We believe and assert that these determinations are in error.

The specific explanation and basis for our appeal is identified as follows:

1. Mesa has not clearly demonstrated, as required by Mesa City Code 5-17, that the act of covering the proposed RV parking spaces at Mr. Germaine's development overburdens the existing public fire facilities and equipment. That said facilities and equipment will need to be expanded and improved to meet the demand created by these proposed covered RV spaces.
 - a. Mesa asserts that 5-17's definition of "Building Area" is the key to determining whether or not Mr. Germaine's proposed covered RV parking space should be included in the assessment of non-residential fire and public safety development impact fees. Staff even cites prior development impact fee assessment practices as affirmation of this conclusion. ***Not only do we believe this conclusion to be incorrect from a life safety code standpoint, but this assessment is not imposed equitably to all of the territory within the corporate limits of Mesa.***
 - b. Mesa's Fire personnel opine that covered RV/Boat storage spaces "pose a greater public safety risk than uncovered storage". That the canopy limits the FD's ability to fight the fire from above and causes heat/smoke to travel horizontally. ***We disagree with these opinions/arguments for two reasons. First, Mesa's adopted life safety codes do not require these covered RV parking spaces to be fire sprinklered. If the simple act of covering the RV parking spaces creates an increased fire hazard, then why weren't they required to be fire sprinklered? Second, the same opinions/arguments that Fire personnel made for these covered RV parking spaces would apply equally to the covered parking spaces you find at office building developments throughout Mesa - that a covered parking space at office buildings presents a greater fire hazard for the same reasons as covered RV parking. Certainly a greater fire hazard than an uncovered parking space at an office building.***
 - c. Mesa has explained that the determination that covered RV/Boat parking spaces should be assessed non-residential fire development impact fees was established based upon an internal staff decision between the City Attorney and the Building Official. ***We believe this is in error and not in compliance with A.R.S. 9-436.05D. No public hearings were held. The land use assumptions and infrastructure improvements plan were not updated. We believe that such land use assumptions were not contemplated prior to this internal decision.***
 - d. Mesa states that one way they've validated their imposition of the non-residential fire development impact fees on covered RV/Boat parking spaces is they've contact other municipalities and were told they charge these impact fees similarly. ***We believe that is an error of judgement. Every municipalities development fees are established consistent with A.R.S. 9-436.05, their own unique City Code, their own unique infrastructure improvement plan, and other factors unique to their jurisdiction. It isn't apples and apples because Phoenix does it.***

- e. *Mesa has not clearly demonstrated that the non-residential fire development impact fees being imposed upon Mr. Germaine's development, and based upon an internal staff decision, does not exceed a proportionate share of the cost of non-residential public fire services, based on service units, needed to provide necessary public services to the development consistent with A.R.S. 9-436.05B3.*
2. Mesa has not clearly demonstrated nor provided any serious rationale, as required by Mesa City Code 5-17, that the act of covering the proposed RV/Boat parking spaces at Mr. Germaine's development overburdens the existing public safety facilities and equipment. That said facilities and equipment will need to be expanded and improved to meet the demand created by these proposed covered RV spaces.
- a. The determination/denial we received on February 4, 2018 did not even directly address this part of our appeal. It was generally lumped into the detail argument presented for public fire facilities and equipment. The determination/denial we received on March 11, 2019 did have a specific response to this part of our appeal. However, there was a general statement presented that the Police Department does have calls for service involving RV/Boat storage facilities. We do not dispute or take umbrage with that assertion. ***Where we believe that Mesa is in error is that the Police Department does not state that they have experienced an increased in calls for service that are directly attributed to RV/Boat parking spaces being covered versus uncovered. In fact, a highly secured facility (8' tall perimeter block walls, electronic surveillance & alarms, controlled gated entry, etc) like that proposed for RV Renovators would be more secure, not less - whether or not the spaces are covered.***
 - b. Mesa has explained that the determination that covered RV/Boat parking/storage spaces should be assessed public safety development impact fees was established based upon an internal staff decision between the City Attorney and the Building Official. ***We believe this is in error and not in compliance with A.R.S. 9-436.05D. No public hearings were held. The land use assumptions and infrastructure improvements plan were not updated. We believe that such land use assumptions were not contemplated prior to this internal decision and therefore the internal staff decision is not enforceable.***
 - c. *Mesa has not clearly demonstrated that the non-residential fire development impact fees being imposed upon Mr. Germaine's development, and based upon an internal staff decision, does not exceed a proportionate share of the cost of non-residential public fire services, based on service units, needed to provide necessary public services to the development consistent with A.R.S. 9-436.05B3.*

- d. Mesa states that one way they've validated their imposition of the non-residential public safety development impact fees on covered RV/Boat parking spaces is they've contact other municipalities and were told they charge these impact fees similarly. **We believe that is an error of judgement. All municipalities establish development fees consistent with A.R.S. 9-436.05, their own unique City Code, their own unique infrastructure improvement plan, and other factors unique to their jurisdiction. It isn't apples and apples because Phoenix does it.**

Thank you in advance for your attention to this matter. We look forward to our appeal hearing with the appropriate City Council committee. We have endeavored to clearly state the basis of our appeal; however, we recognize that as we prepare to the future City Council committee hearing, more information may come to our attention. If you would like to discuss this matter in more detail, please contact me.

Regards,

A handwritten signature in blue ink, appearing to read "Jeff D. Welker", with a large, stylized flourish at the end.

Jeff D Welker

cc: Mr. Monty Germain
Ms. Christine Zielonka