

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

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| (1) DEPARTMENT Public Works | | (2) MEETING DATE June 13, 2006 | | (3) CONTACT/PHONE Richard Marshall Development Services Engineer (805) 781-5280 | |
| (4) SUBJECT Hearing to Consider an Appeal of the South County Road Improvement Fee by D. Lumsden, Nipomo Community Presbyterian Church | | | | | |
| (5) SUMMARY OF REQUEST Nipomo Community Presbyterian Church has applied for a building permit (PMT 2005-02105) to construct a building for a Church sanctuary on North Thompson Avenue in the South County Road Fee area. There are other existing Church buildings and facilities on the site. The fee associated with this permit application is \$15,100. Mr. Lumsden has filed an appeal of the fee. | | | | | |
| (6) RECOMMENDED ACTION It is our recommendation that your Honorable Board deny the appeal. | | | | | |
| (7) FUNDING SOURCE(S) N/A | | (8) CURRENT YEAR COST N/A | | (9) ANNUAL COST N/A | |
| (10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A | | | | | |
| (11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Planning & Building, County Counsel | | | | | |
| (12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____ | | | | | |
| (13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input checked="" type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All | | | (14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A | | (15) Maddy Act Appointments Signed-off by Clerk of the Board N/A |
| (16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est. 20 min) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____) | | | (17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A | | |
| (18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A | | | (19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A | | |
| (20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____ | | | (21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | | (22) Agenda Item History <input checked="" type="checkbox"/> N/A |
| (23) ADMINISTRATIVE OFFICE REVIEW <p align="center"><i>OK Leslie Brown</i></p> | | | | | |

REFERENCE: 06JUN13-H-1
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6-13-06*



SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

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email address: pwd@co.slo.ca.us

TO: Board of Supervisors

FROM: Richard Marshall, Development Services Engineer *RM*

VIA: Glen L. Priddy, Deputy Director of Public Works - Engineering Services *RM for GP*

DATE: June 13, 2006

SUBJECT: Hearing to Consider an Appeal of the South County Road Improvement Fee by D. Lumsden, Nipomo Community Presbyterian Church

Recommendation

It is our recommendation that your Honorable Board deny the appeal.

Discussion

Nipomo Community Presbyterian Church has applied for a building permit (PMT 2005-02105) to construct a building for a Church sanctuary on North Thompson Avenue in the South County Road Fee area. There are other existing Church buildings and facilities on the site. The fee associated with this permit application is \$15,100. Mr. Lumsden has filed an appeal of the fee. The appeal letter is attached as Exhibit A.

Basis for adjustment or waiver of the fee. 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 South County Circulation Study establishes the reasonable relationship, or nexus, required for the imposition of fees within its study area. Representatives of the Church filed the permit application on January 13, 2006. The Public Works Department sent a notice of the Road Improvement Fee by mail on January 26, 2006. The letter informed the applicant of the current fee at the time and of the increase that was to become effective February 14, 2006. To avoid the increased fee the applicant paid the current fee on February 10, 2006. The appeal was filed April 26, 2006.

All new developments in the area will contribute to the need for road and other transportation improvements the study recommends. The improvement package 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, as traffic volumes increase with additional development. The

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road improvement fee was designed to apportion the cost of the needed improvements to all new development, based on the amount of traffic generated.

Evaluation of appeal issues. In the letter attached as Exhibit A, Mr. Lumsden raises several issues, which are paraphrased below, along with staff response:

Appeal point: The Church is a non-profit, tax exempt organization and makes positive contributions to the community. Members should not have to pay this fee because they decide to attend and work through the Church.

Response: The Road Improvement Fee ordinance enumerates the criteria on which a waiver or adjustment of the fee may be based, as noted above. Being a not for profit, tax exempt organization does not address any of the criteria for waiver or adjustment of the fee. Additionally, persons who attend services or other activities, or who work at the church, represent an increase of traffic on the area's roads. This forms the basis of the calculation of the Road Improvement Fee.

Appeal point: The new construction will not add any new traffic as the same people who meet in the Fellowship Hall will use this new Sanctuary.

Response: The fees are calculated using trip generation rates developed by the Institute of Transportation Engineers (ITE). The ITE manual reports the results of studies which have been conducted throughout the nation. For each type of land use reported, the studies measured actual driveway traffic at typical sites then developed a rate which can be used as a predictor for other locations with the same use. ITE reports a rate of 0.66 trips per 1000 square feet of gross floor area during a weekday afternoon peak hour, based on actual experience at church facilities just like what is proposed here. This is the rate that was used in the calculation of the road fees for this permit. Attached Exhibit B is an excerpt from the ITE Trip Generation Manual.

Appeal point: The traffic generated by this site is concentrated to hours of minimal road use.

Response: As stated above, the ITE have studied projects similar to this one and taken into account the time and days of usage in the development of the rate. The time and days mentioned in the response letter are typical of church facilities as the studies indicate.

Appeal point: If the fee can not be waived the fee should be modified. The existing Fellowship Hall is 3200 square feet and the new Sanctuary will be 4300 square feet. The difference in these two areas should be the only areas applicable to the fee.

Response: As stated above, the ITE studies take into account the entire gross floor area (square feet) of all the facilities on the study sites. If the permit was only for an addition to the existing building then the fee would be based on the difference in square feet. Calculating the fees for an entire new building based on the difference is not in accordance with the ITE studies or to the Road Improvement Fee Ordinance. Additional building (square feet) translates to additional traffic as more members and staff will use the facilities as the Church continues to grow. Road fees were not required on the previous permits, one to construct the church/classroom building (permit #87215, 3/19/90) and another for a modular classroom (permit #C5016, 7/19/01). The current building permit application is the only opportunity to collect the fee associated with the additional square footage of the entire new building.

Prior Board History of Fee Appeals. Over the 16+ years of the Road Improvement Fee for South County, over \$11.1 million has been collected through payment of this fee with new development. During that time in the South County area, twenty-three appeals have been considered by your Board. Seventeen of these were for single-family residences; fifteen denied, one was waived, and an adjustment was granted to the other. Four were commercial projects; one waived, and three adjusted. One industrial project was adjusted and one church facility was waived.

Countywide, appeals of the fee for church facility construction have been heard by your Board three times. One was waived, one adjusted, and one was denied.

Other Agency Involvement/Impact

The building permit was processed by the Department of Planning and Building. We have reviewed this item with the office of County Counsel, who concurs with our recommendation.

Financial Considerations

The South County Circulation Study apportions over \$65 million to the payment of road improvement fees by new development. It also allocates approximately \$58 million to other sources, for some of which the County will be responsible to seek other sources of funding. Granting this appeal and adjusting the road improvement fee will result in a small increase in the County's share. Granting this appeal may also have the effect of encouraging other people to seek this same adjustment. This could result in substantial loss of road improvement fee revenue in the future.

Results

The result of the recommended action before your Board today will be a determination that the amount charged to the appellant was appropriate, and consistent with applicable legal requirements and Board Policy, and then no refund would be made.

Attachments: Exhibit A. Appeal letter from Donald Lumsden, Nipomo Community Presbyterian Church
 Exhibit B. Excerpt from the ITE Trip Generation Manual
 Exhibit C. Copy of approved site plan for current permit

c: Community United Presbyterian Church
 PO Box 158
 Nipomo CA 93444-031

Reference: 06JUN13-H-1



EXHIBIT A
Nipomo Community Presbyterian Church

Rev. Luanne Griguoli, Pastor
Rebecca Watkins, Youth Pastor



Living the Vision

April 24, 2006

Clerk of the Board of Supervisors
San Luis Obispo County
County Government Center, Room 207
San Luis Obispo, CA 93408

Re: County Road Improvement Fee
Permit App. PMT2005-02105

Phone: (805) 473-8059
<http://nipomopres.org>

FILED

APR 26 2006

JULIE L. RODEWALD, COUNTY CLERK
By Sandy Curran
DEPUTY CLERK

The Community Presbyterian Church of Nipomo has received the notification of the County Road Improvement Fee associated with the Building Permit referenced above. The fee has been paid as suggested in the notification to preclude even higher charges. But we hereby request that the fee be waived for this construction because it is not consistent with the rationale for such fees. Three independent reasons justify waiving the fee.

First, the church is recognized as a not-for-profit, tax-exempt organization at the federal, state, and county levels. As such, the church makes positive contributions to children, youth, and adults in the community by enhancing the spiritual welfare of residents. In addition, it makes direct contributions to individuals and organizations that help meet personal and physical emergency needs. In short, the church's role complements the work of county agencies and builds a stronger community. The church members should not have to pay this fee simply because they decide to attend and work through a church. Its role as a tax-exempt organization justifies waiver of the fees.

Second, the new construction does not create a new use by new people. The same people now meet in a fellowship hall adjacent to the new construction. The new building does not inherently create any change in traffic and road usage from the that which presently exists. The rationale of new people adding to road construction and maintenance, therefore, does not apply to this construction.

Third, the present road use by those attending services is concentrated to very limited hours that occur during minimal traffic conditions. Church services are held on Sundays from 10:30 am to 12:00 noon and Wednesday evenings from 6:00 pm to 8:00 pm, hours when roads are lightly used. This is not a business open five to seven days a week during peak traffic hours, and, therefore, the rationale behind road usage fees does not apply in this situation.

Although we believe strongly that for any or all of the reasons cited above the fee should be waived for this project, it is clear that, minimally, the fee should be modified. If creation of additional space is considered a legitimate reason to charge the Church a road fee, then the maximum fee should be based only on the additional square footage in the new meeting room. As covered above, usage is simply switched from one room to the other. The Fellowship Hall where the congregation now meets is approximately 3200 sq. ft. and the new construction will be 4300 sq. ft. A new fee based on the difference between the two sizes is more rational than a fee based on the new building by itself.

Thank you for reviewing the County Road Improvement Fee for this project. We look forward to working with you to provide any additional information needed for a satisfactory resolution to this issue.

Yours truly,

Donald Lumsden, Elder
Chair, Finance Committee

1235 N. Thompson Rd. • P.O. Box 158 • Nipomo, CA 93444

EXHIBIT B**Land Use: 560
Church****Description**

A church is a building in which public worship services are held. A church houses an assembly hall or sanctuary; it may also house meeting rooms, classrooms and occasionally dining, catering, or party facilities. Synagogue (Land Use 561) is a related use.

Additional Data

Worship services are typically held on Sundays.

Some of the surveyed churches offered day care or extended care programs during the week.

Peak hours of the generator—

The weekday a.m. peak hour varied between 10:00 a.m. and 12:00 p.m. The weekday p.m. peak hour varied between 7:00 p.m. and 11:00 p.m. The Saturday peak hour varied between 5:00 p.m. and 8:00 p.m. The Sunday peak hour varied between 9:00 a.m. and 1:00 p.m.

The sites were surveyed from the late 1970s to the 2000s throughout the United States.

Source Numbers

90, 120, 169, 170, 423, 428, 436, 554, 571, 583

Church (560)

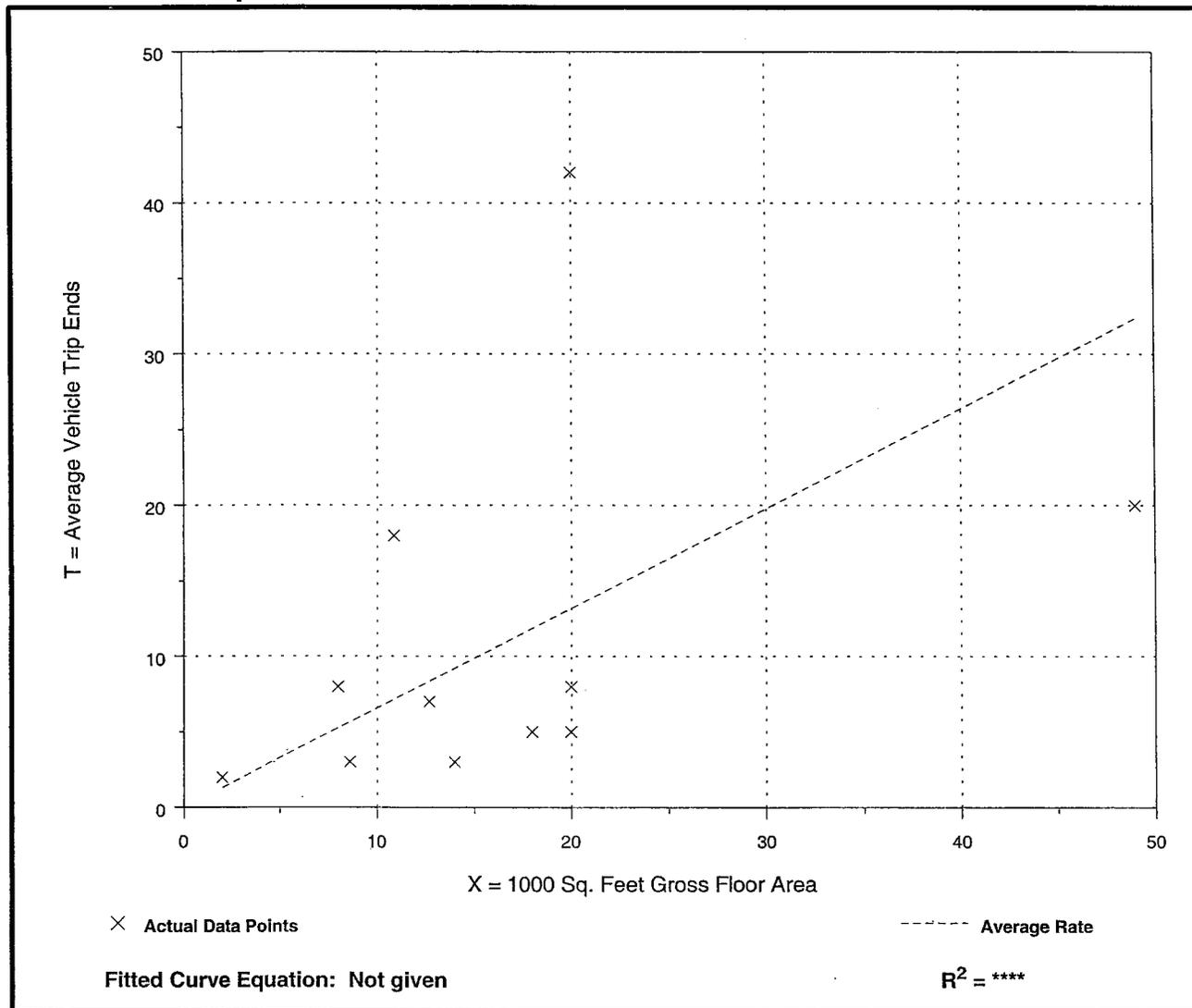
Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.

Number of Studies: 11
 Average 1000 Sq. Feet GFA: 17
 Directional Distribution: 52% entering, 48% exiting

Trip Generation per 1000 Sq. Feet Gross Floor Area

| Average Rate | Range of Rates | Standard Deviation |
|--------------|----------------|--------------------|
| 0.66 | 0.21 - 2.10 | 0.99 |

Data Plot and Equation



C/T

