BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND

In the Matter of the Appeal of	)	NO. LAND-2015-01759 [Appeal] LAND-2014-01980 [Short Plat]
Kim Yates, Randy Brown, et al[1]	)	**Yates, Brown, et al., Appeal of the Nouri Short Plat**
of an August 12, 2015 Notice of Decision approval of the Nouri Short Plat at 7502 - 132nd Avenue NE, Redmond TPN 7419700010 and 1025059200	)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The Appellants did not satisfy the burden of proof demonstrating that the City's short plat approval was erroneous. The appeal must be **DENIED**.

SUMMARY OF RECORD

Request:
On August 12, 2015, the City's Technical Committee approved the Nouri short plat (LAND-2014-01980) with conditions. The short plat subdivides the half-acre subject property in the R-6 zone into three single-family residential lots. On August 26, 2015, Appellants timely appealed the City's short plat approval.

Hearing Date:
Following a September 21, 2015 pre-hearing conference, the City of Redmond Hearing Examiner conducted an open record appeal hearing on November 20, 2015. After conclusion of the proceedings and prior to decision issuance, the Examiner requested an extension of the decision deadline for five business days, which the parties agreed to grant.

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

For Appellants:
Sandra Eisert, Representative for Appellants
Tom Hinman, Former City of Redmond Planning Commission Chair

[1] Remaining Appellants are: Sandra Eisert, Charles Reichle, John Buckingham, Elizabeth Limback, Roderick Smith, Leah Ngoche, Luis Ulloa, Patricia Thompson, Ean Chhay, Dennis Berri, Andrew Cameron, Touch Lim, Virgil Lee Whiteside, Jasrat Dange, Kevin and Desiree Gwerder, Rohan Phillips, and Michael and Loucinda Anderson. *Exhibit C1.5*. Sandra Eisert acted in the capacity of spokesperson for all appellants after the pre-hearing conference.

For the City:

Heather Maiefski, City of Redmond Associate Planner
Steven Fischer, City of Redmond Planning Manager
Cindy Wellborn, City of Redmond Senior Stormwater and Utilities Engineer
Andy Chow, City of Redmond Transportation Engineer
Paulette Norman, City of Redmond Engineering Manager

For the Applicant:

Scott Sherrow, Senior Principal Engineer, PACE Engineering Inc., Applicant Representative
Brian Way, PACE Engineering Inc., Applicant Representative
Curtis J. Koger, Senior Principal Geologist, AESI, Inc.
Tony Shoffner, Certified Arborist, Shoffner Consulting

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

Appellants Yates, Brown et al., Exhibits (identified in Findings by A prefix)

1. Hinman statement on Nouri Short Plat, dated October 31, 2015
2. Arborist Report by Tina Cohen, dated October 9, 2015
3. Redmond Tree Exception Approval Practices
4. Arborist Report by Brian Gilles, dated November 11, 2015
5. Flawed public notices in Redmond
6. Even Application of the Law to Single Family Homeowners
    a. Duncan letter regarding "tree removal," dated November 12, 2015
    b. Phillips letter regarding "tree removal"
7. Water Report by Chris Pitre, dated November 11, 2015
8. Appellants' Clarification of issues, dated October 28, 2015

City of Redmond Exhibits (identified in Findings by C prefix)

1. Redmond Planning Department Technical Committee Report, dated October 6, 2015, with the following attachments:
    1. Vicinity Map
    2. Legal Description
    3. Notice of Application/Certificate of Public Notice dated June 11, 2015
    4. Notice of Decision dated August 12, 2015
    5. Appeal Form Submitted by Kim Yates, Randy Brown, et al dated August 26, 2015
    6. Hearing Notice, dated October 6, 2015
    7. Public Comments
    8. Signed Petition

9. Scott Sherrow letter, dated July 27, 2015
10. Email from Heather Maiefski to Grazing, dated August 7, 2015
11. Plan Set, dated June 1, 2015
12. Civil Tree Retention Plan, dated September 2, 2015
13. Arborist Report prepared by Shoffner Consulting, dated September 29, 2014
14. Tree Exception Request #1 and #2 prepared by Pace Engineers, dated February 25, 2015
15. Tree Exception Approval Letter
16. Civil Tree Retention Plan with Drip Lines of Trees 6 & 7, dated August 26, 2015

2. PowerPoint Presentation (12 slides)
3. RZC 21.08.260, effective November 1, 2014

Applicant's Representative (PACE Engineers) Exhibits (identified in Findings by P prefix)

1. [none offered]
2. Developed Site Drainage Map, dated October 9, 2015
3. Dry Well Infiltration Considerations, dated October 9, 2015
4. Credentials for Curtis J. Koger and Danika M. Globokar
5. Response to Tree Retention Plan Review, dated November 11, 2015

Other Documents in the Record

- Order Requiring Pre-Hearing Conference, dated September 2, 2015
- Order Setting Hearing and Pre-Hearing Document Exchange Schedule, dated September 22, 2015
- Revised Order Setting Hearing and Pre-Hearing Document Exchange Schedule, dated September 23, 2015
- Fourth Pre-Hearing Order Setting Hearing, dated September 30, 2015
- Fifth Pre-Hearing Order Setting Hearing, dated October 16, 2015
- Appellants' Witness and Exhibit List
- City of Redmond's Witness and Exhibit List
- Applicant's Witness and Exhibit List

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

FINDINGS

Procedural Background

1. On November 4, 2014 a short plat application was filed through the City's PREP process proposing a five lot plat at 7502 132nd Avenue NE. A February 19, 2015 neighborhood meeting on the proposal was attended by seven residents who asked questions about hooking up to sewer, the route and capacity of the proposed sewer, existing sewage smells, problems with flooding of neighboring properties, and stormwater management. On June 2, 2015 the formal application for the Nouri short plat was submitted requesting approval of a five lot short plat consisting of two duplexes and one single-family residence. *Exhibits C1 and C2*.

2. Notice of application was sent to all residents within a five hundred foot radius of the subject property and posted on-site and at the library and City Hall on June 11, 2015. *Exhibit C1.3*. Six public comments were received during the 21-day public comment period expressing concerns relating to (among others) tree retention, open space, density, housing type, stormwater concerns, pedestrian safety, and sewer capacity concerns. *Exhibit C1.7*. On June 28, 2015, 29 neighbors submitted a petition opposing the project. *Exhibit C1.8*.

3. Subsequently, City Planning Staff realized that the Redmond Zoning Code (RZC) 21.08.260(3)(a)(i) is not consistent with the Grass Lawn neighborhood policy N-GL-11 in the Redmond Comprehensive Plan, which states:

   > Allow the same number of dwelling units for duplexes, triplexes or fourplexes on a proposed site as the allowed number of detached single-family dwelling units for the zone in which the site is located, exclusive of any bonuses allowed on the site.

   Exhibit C3. On July 17, 2015, the City notified the Applicant of this error, which meant that the proposal contained too many dwelling units. The Applicant agreed to reduce the number of dwellings and formally requested in a letter dated July 27, 2015 that the City approve a revised proposal that reduced proposed dwellings from five to three. *Exhibit C1.9*.

4. On August 7, 2015 the City notified the person who initiated the petition (known as Grazing in email correspondence) of the amended plat configuration. Sandra Eisert sent an email acknowledging the change but registering ongoing concerns. *Exhibit C1.10*.

5. Notice of decision approving the project as a three lot short plat for detached single-family residential development was issued on August 12, 2015.[2] *Exhibit C1.4*. The approval was timely appealed by 21 adjacent property owners. *Exhibit C1.5*. Following a September 21, 2015 pre-hearing conference convened for clarification of issues and

[2] Site plans in the record still show two duplexes and one detached dwelling; as approved and conditioned, the plat is limited to three dwellings. A revised site plan would be required during the civil engineering process prior to building permit issuance. *Exhibit C1.4*.

procedures, Ms. Eisert became the representative for the Appellant group. *See Orders dated September 2, 22, and 23, 2015*.

Site and Project Description

6. The subject property is comprised of two contiguous parcels in the Grass Lawn Neighborhood.[3] The larger parcel is currently developed with a single-family residence and associated structures; the smaller parcel is vacant. Addressed as 7502 - 132nd Avenue NE, the site has frontage on 132nd Avenue to the west and on NE 75th Street to the south. It has a Single Family Urban Residential (R-6) zoning designation, which allows six units per gross acre. *Exhibits C1, C1.1, and C1.4; Site Visit; RZC 21.08.090*.

7. Topographically, the site gently slopes down from west to east. There are several large mature trees on-site; however, the majority of the site has been disturbed. There are no critical areas and no endangered, threatened, sensitive, or other priority species on-site. *Exhibit C1.4*.

8. Surrounding development is characterized by single-family residential and complementary nonresidential uses including a church across 132nd Avenue and a middle school one to two blocks to the east on NE 75th Street. Zoning to the north, east, and south is also R-6. Properties to the west across 132nd Avenue NE are located outside City limits (within the City of Kirkland) and have an RSX 7.2 zoning designation, which is for low density residential development. *Exhibits C1 and C1.1; Site Visit*.

9. The approved single-family lots would front NE 75th Street and access by individual driveways to that public road. The eastern most portion of the site, which juts to the north, would be included in an open space tract (Tract B) in which mature landscaping would be retained. Another open space tract (Tract A) was proposed in the western end of the property. *Exhibits C1.3 and C1.4*.

10. The short plat approval contained two administratively approved deviations from development standards. The first reduced the standard requiring 150 feet separation between a driveway and an existing intersection. The second reduced standard setbacks required for infiltration as established in the Redmond 2012 Clearing, Grading, and Stormwater Management Technical Notebook. The setback from existing septic tanks and drainfields for building foundations was reduced to 30 feet from 200 feet. Setbacks from upslope and downslope building foundations was reduced to eight feet. The 10-foot setback from property lines and the NGPE was reduced to zero along the public right-of-way (but not from adjacent properties). According to the Redmond Technical Committee, as approved and conditioned, the short plat complies with all residential, architectural, site, landscape, and neighborhood regulations for the R-6 district. *Exhibit C1.4*.

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[3] The site is known as Tax parcels 7419700010 and 1025059200. *Exhibit C1*. The complete legal description is included in the record at Exhibit C1.2.

Issues on Appeal

11. In the timely filed appeal, the following issues (partially paraphrased and abbreviated) were contested by the Appellants:

    1. Tree protection purpose was not met - RZC 21.72.010.A.1,2,6;
    2. Landmark Tree Exceptions without required application - RZC 21.72.060, A.2; RZC 21.72.090 A;
    3. Site Design Standards are not met - RZC 21.72.060, B.1.a through f;
    4. Public notification was incomplete and failed to disclose tree removal plan;
    5. Tree retention requirement of 35% is not being met - RZC 21.72.060;
    6. Stormwater Management drawings are obsolete - current drawings not yet provided, rendering approval premature;
    7. Condition of approval 3.c states that the project would generate less than 5,000 square feet of pollution generating impervious surfaces, but no plan has been submitted so this cannot be determined; and
    8. No conveyance system is provided on the down-gradient property line, nor any management for downstream properties.

    Exhibit C1.5.

12. As relief, Appellants asked for the following:

    1. Developer should resubmit application for new design development and public notice should be made in accordance with all legal requirements.
    2. Provide Public Notification (as originally required) and substantive opportunity for comment and appeal.
    3. Landmark trees, significant trees and stands of trees should be preserved.
    4. Require that the design as directed by code must accommodate the tree retention requirements.
    5. Reject the current tree removal plan.
    6. Revoke the approved Landmark Tree Exception.
    7. Retain a minimum of 35% of significant trees.
    8. Revoke the Technical Committee Short Plat Notice of Decision and require the developer to submit plans for development and review.
    9. Provide Public Notification (as originally required) and substantive opportunity for public input, comment and appeal.
    10. Protect down-gradient property owners from water runoff from this project.
    11. Indemnify down-gradient property owners if City's plan does not work.

12. Create and install Storm Water Management systems in the Grass Lawn Quadrant of the City as provided to other areas of the City, before or as part of the significant development expected.

Exhibit C1.5.

13. Pursuant to pre-hearing procedures requiring clarification of issues, the Appellants submitted witness and exhibit lists that offered evidence to challenge the Applicant's tree report. The Applicant requested the following: "The appeal as filed includes 5 alleged errors in regards to the trees. Each of the five items are detailed with the specific code reference and a description of what criteria is suspect to being deficient per code related to the Preliminary Short Plat plans. The appeal does not reference the tree report. Within the appellants witness and exhibit list they note that the intent of having Tina Cohen attend is to express concerns regarding the "tree reports and tree count." This is the first mention of a contention with the Tree Report. We would like to request that the appellants outline their concerns with the tree report ahead of time, or specifically how their concerns with the tree report relate to the 5 alleged errors." *Order October 16, 2015*.

14. The Appellants submitted the following replies:

ERROR #1 In three places, this section specifically addresses the Tree Removal Plan which is built upon the findings of the Tree Report incorporated by reference as noted in paragraph 1 above.

ERROR #2 Cites the Tree Removal Plan retention rate in the first ERROR statement. The Tree Removal Plan is built upon the findings of the Tree Report incorporated by reference as noted in paragraph 1 above.

ERROR #3 Site design and building location must give priority to trees per this section of code. The tree inventory/map prepared by as part of the tree report is central to site design standards and is hence an appropriate area to be resolved.

ERROR #4 A copy of the tree preservation plan is to be included in mailed notices of application per sub-paragraph B.3.a.xi. That tree preservation plan draws upon the findings of the Tree Report incorporated by reference as noted in paragraph 1 above. Such site map as was provided was incomplete and illegible.

ERROR #5 THIS is a reiteration for emphasis of ERROR #2 as stated above.

Our arborist was retained to review the specifics of the Shoffner Tree Inventory Report of September 29, 2014 as commissioned by the Applicant and to perform an independent field assessment of the Tree Retention Plan for the Nouri Short Plat WHICH IS THE BASIS OF ALL TREE COUNTS IN THE APPLICATION. Findings of multiple inaccuracies or problems with the Applicant's tree inventory and tree retention plan are detailed in her report. Those independent findings substantiate the concerns expressed in our Appeal as ERRORS # 1, #2 and #3 addressed in paragraph 2 of the Part One response.

> The nature of the inaccuracies cited in our arborist's report include the health/condition of several trees, factors related to site design and revisions to the tree retention tables ("tree count") requiring additional adjustment and/or mitigation plantings to the extent that a full review of the project including a new tree inventory and assessment was recommended.
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> **Additional:** Beyond this, an assessment of construction impact on several trees abutting the project is need since their driplines and root systems would be directly impacted in the grading process and they would likely die. This issue was not addressed in the tree plan and inventory.

Exhibit A8 (emphasis in the original).

Trees

15. Approval of the short plat included the City's review and acceptance of a tree inventory prepared by certified arborist Tony Shoffner on September 29, 2014. The tree inventory identified and evaluated 19 trees on-site of a size to meet the City definitions of significant or landmark trees.[4] Three of the 19 trees, labeled as Trees 3, 4, and 5, were determined to be in poor condition because they had previously been topped causing multiple headers, which the arborist concluded excluded them from the definition of significant trees. Of the 16 healthy significant trees on-site, four were found to be landmark trees due to diameters of 30 inches or greater. Redmond Zoning Code 21.72 requires that all healthy landmark trees and 35 percent of all healthy significant trees be retained, which in this case would be at least six trees. The tree inventory indicated that eight significant trees and two landmark trees would be retained, for a total of 62.5% tree retention. Four significant trees and two landmark trees were proposed for removal due to locations that would be impacted by development activities. In compliance with the tree preservation ordinance, 10 replacement trees were proposed: one each for the significant trees and three each for the landmark trees removed. *Exhibit C1.13*.

16. Subsequently, the proposal was revised to retain six significant trees and two landmark trees, for eight total retained trees, or 50% of the 16 healthy significant trees on-site. Trees 1, 9, 11, 15, 16, 17, 18, and 19 were proposed to be retained; Trees 8 and 14 were identified as potentially impacted by construction too close to their roots.[5] The remaining trees were proposed for removal due to condition or to location within the development envelope. The September 2, 2015 tree preservation plan indicated four significant (Trees 2, 10, 12, and 13) and two landmark trees (Trees 6 and 7) would be removed, and the remaining two significant trees could be impacted. Ten replacement trees for the four significant trees and two landmark trees to be removed were calculated as required; however, 13 replacement trees were proposed. *Exhibits C1 and C1.12*.

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[4] Pursuant to RZC 21.78, a significant tree is any healthy tree six inches in diameter at breast height (d.b.h.), or any tree four inches in diameter at breast height (d.b.h.) that, after considering its age, height, value, or function, the tree or tree stand is determined to be significant. A landmark Tree is any healthy tree over thirty inches in diameter.

[5] Note: These tree tallies are based on the trees as depicted in the site plan. The tree evaluation data chart in the upper right corner of the plan was not modified to reflect Trees 8 and 14 as impacted, such that the number of retain trees in the chart is higher than the number depicted in the site plan. *Exhibits C1.12 and C1.13*.

17. At hearing, Appellants argued that the vicinity of the subject property in the Grass Lawn Neighborhood is characterized by "distinguished homes nestled into fairly large wooded lots graced by mature trees". *Exhibit A1, page 1; Hinmann Testimony*. They described the subject property as a "gateway" and as a "precedent" for the neighborhood. *Exhibit 1*. They contended that the proposed subdivision of the site into three lots developed in a manner that requires removal of the proposed number of trees would negatively impact the neighbors' quality of life and strip their neighborhood of its identity. *Exhibit 1; Hinmann Testimony*.

18. Appellants asserted that it is the intention of Redmond's tree preservation ordinance to avoid the removal of stands of trees and significant trees in order to maintain the quality of the urban environment per RZC 21.72.010(A)(1) and that the approved plat fails to meet this intention. They argued that the tree removal plan removes the trees to accommodate the building design; it does not modify the design and placement of structures to retain and protect the trees. Basing their calculations on the numbers of the Notice of Decision, they asserted that the tree removal plan only retains six of 19 identified trees, resulting in a 31.6% retention rate. They contended that the three retained Bitter Cherry trees are weed trees and that removal of the large native evergreen trees is in exact opposition to the stated goals of RZC 21.72.010(A)(6). They noted that the other trees called out as "impacted" can be removed at will. They argued that the landmark tree exception was not applied for consistent with RZC 21.72.090, that it should not have been granted and/or should be revoked because the exception is not necessary as defined by RZC 21.72.090.B.1.a, b, c, d, or e. In all, they asserted that neither the minimum requirement nor the spirit of the tree preservation ordinance is met by the approved plan. *Exhibits C1.5 and A3; Hinmann Testimony; Eisert Testimony*.

19. In support of the tree preservation errors the Appellants assigned to the short plat approval, they offered an arborist's letter of review of the approved tree preservation plan (the Cohen review) prepared by arborist Tina Cohen. Ms. Cohen did not testify at hearing. The Cohen review contains a list of "inaccuracies or problems [Ms. Cohen] found when reviewing the documents compared with field conditions." *Exhibit A2, page 1*. First, Ms. Cohen determined that tree locations in the east portion of the site plan are not consistent with field conditions. Second, Ms. Cohen disagreed that Trees 3, 4, and 5 are in poor condition because despite having been topped, "firs are surprisingly resilient", although she acknowledges that "topping is never an appropriate treatment". *Exhibit A2, page 2*. The fact that they suffered no damage in the August 2015 wind storm made her assess them as viable, meaning that landmark tree exception requests would have to be approved for their removal. She further determined that Tree 5 is a significant tree, rather than a landmark tree, because it is not greater than 30 inches in diameter. Also, Ms. Cohen concluded that Trees 15 and 17 are non viable because they have cavities in their trunks. She contended that a wild cherry tree is short lived and she questioned whether it could be considered equivalent to a Douglas fir. In her assessment there are 17 trees on-site - 12 significant and five landmark - that must be considered in light of the tree preservation ordinance. In her revised summary of tree retention, she noted that per her tree inventory, she calculates four landmark and six significant trees would be removed,

one significant tree would be impacted, and one landmark and five significant trees would be retained, for a total tree retention percentage of 35%. *Exhibit A2*.

20. The Appellants commissioned a second review of the tree retention plan by another certified arborist, Brian Gilles. Mr. Gilles conducted his own site visit during which he viewed the site's trees from adjacent properties, and reviewed the Applicant's tree preservation plan and Ms. Cohen's review. Mr. Gillies agreed with Ms. Cohen that tree locations in the northern extension of the eastern property are not consistent with field conditions, which could be a factor in determining whether their roots would be impacted by proposed development. Second Mr. Gilles noted that Trees 3, 4, and 5 are 42-inch, 34-inch, and 26-inch Douglas firs. He observed Trees 3 and 4 with binoculars from the edge of the property and determined that they have no obvious decay pockets or columns immediately below the forks and that they are therefore in fair or good rather than in poor condition and thus are landmark trees. He also asserted that two of the retained trees in proposed Tract B have decay in their lower trunks and are not suitable for inclusion in the retained significant tree count; he does not identify these by number. He contended that Redmond has previously required him to include off-site trees within 50 feet of a proposed development site, and that this was not done in the Nouri tree preservation plan. By his estimates, there are six off-site trees to the north with driplines extending into the subject property, which would be damaged by proposed excavation for building foundations. He asserted that the stormwater drywell proposed to be installed within the dripline of retained Tree 8 could kill the tree. He argued that retained Trees 8, 9, and 11 have already been damaged by recent construction of an off-site residence, and that with removal of Trees 3, 4, 5, 6, 7, 10, 12, and 13, Trees 8, 9, and 11 would be subject to wind they've previously been protected from and are not adapted to. He asserted that construction on Lot 3 would likely disturb impacted Tree 14 to an adverse extent and it is not suitable for retention. *Exhibit A4*.

21. The Applicant's arborist Tony Shoffner was unable to attend the hearing due to a scheduling conflict.[6] The Appellants' tree evaluations were provided to Mr. Shoffner prior to hearing and he submitted a written response to both evaluations. In response to Ms. Cohen's disputing Trees 3, 4, and 5's condition, Mr. Shoffner explained his reason for determining that Douglas firs that have been topped present hazards. He stated that topping leads to regrowth in new trunks, with attachments to the original trunk that are not as stable as the original trunk because new bark at the connection creates pressure that can lead to failures even in the absence of wind. He disagreed with her assessment of their condition and stood by his own. He conceded that Tree 11, at 30-inches in diameter, is a significant tree rather than a landmark tree, because it is not greater than 30-inches. Regarding Trees 15 and 17, which Ms. Cohen felt were unsuitable for retention due to decay cavities in trunks, Mr. Shoffner disagreed and stated that the cavities are small, and that the trees (at only eight-inches in diameter) are small enough not to present hazards in the event of failure. He noted they did not fail in the August 29th wind storm despite being leafed out. Mr. Shoffner noted that when he performed his

[6] On a procedural note: the Applicant reported this conflict at the time the November 20th hearing date was selected. Due to overall scheduling conflicts, it was determined that the hearing should proceed in his absence.

initial assessment, Tree 14 would not have been impacted by development to the extent it now would be and he agreed that it should be removed. He asserted that even if Ms. Cohen's findings were adopted, the project would still retain 35% of significant trees on-site, and that Trees 3 and 4 would likely be approved for landmark tree exception because of the hazards they pose. However, he stood by his initial assessment that Trees 3 and 4 are in poor condition and therefore should not be considered significant trees. He noted that with removal of Tree 14, the number of required replacement trees would go up to 11. *Exhibit P4*.

22. Because Tree 11 is being retained, whether it is a significant or a landmark tree doesn't affect final numbers. Because Tree 14 was identified as impacted rather than retained in the September 2nd plan, its removal would not affect the project's compliance with the required tree retention rate. *Exhibit C1.12*.

23. In response to Mr. Gilles' review, Mr. Shoffner contended that for tree retention calculation purposes, off-site trees are not considered. Referencing Sheet C5.0 of the project plan set, Mr. Shoffner asserted that the drywell at issue would be 14 feet beyond the dripline of Tree 8, which with a 12-inch diameter has a 16-foot radius dripline. Regarding increased wind exposure for retained Trees 8, 9, and 11, Mr. Shoffner noted that these trees are currently exposed to the south/southwest, and that prevailing (and strongest) winds in the area typically blow from the south or southwest, and occasionally from the west. He agreed that it is important that these three trees are properly protected during construction to maintain root hold in the south, southwest, and west. *Exhibit P5*.

24. Regarding Appellants' contention that the approved tree retention plan fails to meet the spirit as well as the minimum requirements of the tree preservation ordinance, Planning Staff noted that RZC 21.72.060(A)(1) establishes the allowed minimum requirement of 35 percent tree retention for all new developments and encourages that this be met by avoiding the removal of stands of significant trees. Staff noted that the approved tree plan met the tree retention requirement by retaining 37% of all significant trees on the site. Among them is a stand of healthy trees located in designated open space Tract B. Staff further noted that the Applicant is currently going through the civil construction review process and that more recent plans propose retention of two additional trees located in Tract B, for a total tree retention rate of 50%. Staff asserted that the Nouri short plat complied with tree preservation code provisions at time of approval and continues to comply as the proposal develops through the civil construction review process. Staff asserted that in meeting the 35% retention and other aspects of this section of code, the plans comports with the purpose of the code. As adopted and applied by the City, satisfaction of the 35% significant tree retention requirement is how the aesthetic, ecological and economic benefits of forests and tree covered areas in Redmond are to be preserved. *Exhibits C1, C1.11, and C1.12; Maiefsky Testimony*.

25. Planning Staff contended that the City doesn’t consider Bitter Cherry trees to be “weed trees” and noted that the tree preservation ordinance does not have a category or definition for weed tree. Staff asserted that RZC 21.72 allows Bitter Cherry trees to be counted towards tree retention requirements if they meet the definition of significant tree.

Also, Staff noted that all the proposed retained trees except for the Evergreen Magnolia are native to the northwest, providing the benefits listed in RZC 21.72.010(A)(6)(a-l). The approved plat creates two open space tracts which allow for permanent protection of several significant trees, including a stand of significant trees in Tract B. Pursuant to RZC 21.72.060(B), existing stands of healthy trees are the highest priority for tree preservation. Regarding Appellants' arguments about the relative values of the trees on-site, Planning Staff indicated that the City lacks authority to require an applicant to exceed the established retention rate or to place additional constraints by species that are not explicitly stated in the ordinance. *Exhibit C1; Maiefsky Testimony*.

26. The Applicant applied for two landmark tree removal exceptions to allow removal of Trees 6 and 7, indicating that the narrow width of the subject property necessitates the request. Tree 6's 40-foot diameter dripline and Tree 7's 44-foot diameter dripline together encumber the majority of the buildable area of original Lots 4 and 5, now Lot 3, and intrude into code-required frontage improvements. Planning Staff argued that an applicant for landmark tree removal exception is not obligated to prove that each criterion at RZC 21.72.090 is met; the code requires that only one be met. As determined by the Code Administrator, the Applicant's tree exception request letter showed more than one of the criteria was met, justifying exception approval on March 23, 2015. Planning Staff noted that any approved tree exception request can be re-evaluated during the civil construction review process and that the change from a five lot plat to a three lot plat does not alter the need for the exception or require any change to the conditions of exception approval. *Exhibits C1, C1.14, C1.15, and C1.16*.

27. Appellants contended that permission to remove trees is unevenly granted by the City in favor of developers and against individual property owners. They allege that RZC 21.72.020 as interpreted by Planning Staff to homeowners concerned about the safety of trees on their lots seemingly showed preference to developers and did not offer relief to individual community residents. *Exhibit 6; Hinmann Testimony; Eisert Testimony*.

28. City Staff noted that homeowners are allowed by code to remove two trees a year. Tree removal permits are issued at the permit counter, if they are approvable. Per Code, the City can require an arborist report proving that a landmark tree is nonviable prior to permitting removal. *Fischer Testimony*.

29. Appellants argued that the public notice of application was incomplete because it failed to disclose the tree removal plan per RZC 21.76.080(B)(3). At hearing they offered a copy of the notice of neighborhood meeting distributed by the Applicant dated February 19, 2015, which included a site plan showing the locations of trees in open space tracts and along the frontage in relation to proposed development. However, the notice of neighborhood meeting arrived in a plain envelope with PACE Engineers as a return address and, Appellants asserted, recipients had no reason to know that the nondescript piece of mail related to removal of trees in their neighborhood. Appellants also submitted the notice of the short plat application from the City of Redmond dated June 11, 2015 received by Kim Yates, which came in an envelope marked "Notice of Land Use Action Enclosed" and included a vicinity map and a site plan but did not include the

tree preservation plan. Appellants contended that this notice of application was inadequate and failed to satisfy RZC 21.76.080A.3 and therefore neighbors were not reasonably apprised of the development proposed. *Exhibit A5; Hinmann Testimony; Eisert Testimony*.

30. In response to notice concerns, Planning Staff testified that they were not aware of why the tree plan would not have been received by Appellants in the City's notice of application, because the tree preservation plan was in the certified copy of the notice packet in the record. If it was left out of some packets, it was done in error and without Staff's knowledge. Staff received public comments and questions relating to tree preservation during the public comment period on the notice of application. *Exhibits C1. and C1.3; Maiefksy Testimony*.

Stormwater Management

31. As proposed and approved, all roof runoff would be routed to drywells located on-site. Driveway, sidewalk, planter strip, and roadway improvements to NE 75th Street would be routed to the existing City stormwater piped conveyance system located in NE 75th Street. Tracts A and B would maintain existing flow patterns. In the existing condition, the on-site residence is served by a splash block for roof runoff and all stormwater appears to sheet flow easterly across the east property line, passing through several adjacent residential lots to the east until it enters an open ditch at 134th Avenue NE. The approved short plat is designed to eliminate the existing runoff onto the adjacent properties through the use of infiltration and by conveying stormwater to the existing storm system, which should result in an improvement over the existing condition. *Exhibits C1 and C1.11; Wellborn Testimony*.

32. The remaining errors assigned to the short plat approval related to stormwater management and review thereof. In their testimony, Appellants asserted that the subject property slopes 13 feet down to open space tract. Presently, surface water moves east and northeast. Neighbors have experienced costly flooding and they are concerned for their basements, drainfields, and septic tanks. They contended that only the first foot of depth is topsoil, then there are nine feet of compressed Vashon till, which forms a solid impervious layer. They stated that storm sewer grates back up and stormwater runs down the street as is, and that the system is at capacity. They argued that it is almost certain that drywells will overflow, and that even if the overflow is sent to open space tracts, it will run downhill onto neighboring properties. They also expressed concern that drywells four feet in diameter placed within the driplines of trees would weaken or kill the few mature trees to be retained. *Eisert Testimony; Hinmann Testimony*.

33. Appellants argued that the site plan approved is obsolete due to the change in the number of lots allowed; revised plans were not provided or reviewed by City Stormwater Staff prior to approval. Because of this, they contended that the assumptions underlying stormwater conditions of approval can't be accurate and that the short plat approval was premature. They point out that the notice of decision states that the project will create less than 5,000 square feet of pollution-generating impervious surface, but since no revised plan was submitted, the extent of such surfaces cannot be known. Further they

argued that there is no conveyance system on the adjacent down-gradient property line, no plan for adjacent down-gradient water management as required, and no plan for emergency overflow management. Finally, they contended that site testing in a year of significant drought is not good strategic planning for a management system for the future. *Exhibit C1.5*.

34. In support of their stormwater concerns, Appellants retained a licensed hydrogeologist Chris Pitre of Coho Water Resources to review the stormwater management documents prepared by PACE Engineering and Associated Earth Sciences. Mr. Pitre noted that the Applicant's information is preliminary in nature and requires further design, and that the design appeared to be evolving. He noted that runoff from rooftops is proposed to go to drywells and that runoff from remaining impervious surfaces would be directed to the City's stormwater system. Among a list of questions about the incompleteness of the plans, Mr. Pitre several raised technical factors of concern, touching such items as extrapolating flow rates from simulated conditions, flow back into the drywells, accuracy of the groundwater mounding analysis, and potential roofing material leaching contamination into drywells, among others. *Exhibit A7*.

35. The Applicant provided written and verbal responses to the Appellants' stormwater claims. The Applicant's consultants at Associated Earth Sciences Inc. (AESI), including Curtis Koger, designed the project's stormwater management system after conducting a subsurface exploration and infiltration testing program based on the Department of Ecology Stormwater Management Manual for Western Washington. The project's drywells would be based on a typical drywell infiltration system and stormwater best management practices that have been used in countless other small and large development projects by AESI in and around Redmond. AESI's conclusion was that infiltration of the roof runoff from the three proposed structures would have a negligible effect on local groundwater levels. Because only roof runoff would be directed to drywells, the total volume would be relatively low. The proposed drywells would be embedded into advanced outwash underlying the site to ensure infiltration. AESI's mounding analysis showed that groundwater mounding would conservatively (worst case scenario) reach 10 feet at the on-site drywells, reducing to five feet within five horizontal feet of the drywell, and dissipating entirely within 40 feet. Mr. Koger noted that the drywells would be observed at the time of construction by a qualified engineer to confirm that subsurface conditions are as anticipated. The modifications to standard approach called out in Mr. Pitre's questions related to an extended test period - longer than required - and use of a different in flow to reduce erosion in test pit. According to Mr. Koger, these modifications skewed the results towards a more conservation outcome or had no effect on results. AESI implemented an additional factor of safety beyond that required in the MODRET analysis. Mr. Koger stood by AESI analysis and design for the short plat and noted that stormwater management design is an iterative process that would continue to evolve through construction. *Koger Testimony; Exhibit P2*.

36. With regard to the incomplete nature of the site plan and the stormwater management engineering, Planning Staff noted that the approved project drawings were approved in the PREP process, an optional review process during which the project is reviewed for

feasibility and for inclusion of all items on the submittal checklist. The submitted drawings were approved because all items in the checklist had been addressed and feasibility was demonstrated. The PREP process does not include review of the engineering. Engineering details are reviewed for compliance with applicable standards during civil construction review, which occurs after initial land use approval. Rigorous review of stormwater calculations and assumptions for adherence with the Stormwater Management Technical Notebook to ensure that 100% of the runoff is infiltrated without overflow and to ensure that the project would convey up to the 100-year storm without overflow, including items specifics as infiltration rate and design, detention, water quality, emergency overflow, and conveyance, has yet to occur. Conditions of approval in a short plat notice of decision do not require the Applicant to submit new plans drawn to match conditions for a second feasibility analysis. Plans are updated and revised to reflect changes implemented during land use approval at the time of civil construction review. *Exhibit C1; Maiefsky Testimony; Wellborn Testimony*.

37. The plans approved in the PREP process showed the pollution-generating impervious surface area on several plan sheets including the site plan, transportation plan, and utility plan. The Applicant's stormwater report included an exhibit showing the amount of new non-pollution-generating impervious surface as 1,482 square feet, and a total pollution-generating impervious surface area of 4,182 square feet. Projects creating 5,000 square feet or more of pollution-generating impervious surface area are required to provide water quality. If additional roadway improvements are required of the project during civil construction review (e.g., half-street improvements) increasing pollution-generating impervious surface area to 5,000 square feet or more, water quality will be required for the short plat. City Staff noted that the design and engineering of the infiltration system, to be determined during civil construction review, would not be based solely on field observations taken in one year; instead, infiltration is set up in a hydrologic model and tested with the last 40 years of storm data for the region, so the fact that the site visit happened in a drought year does not skew the calculations. *Exhibit C1; Wellborn Testimony; Maiefsky Testimony*.

CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050.C, Short Plat approvals are Type II Administrative decisions made by the City of Redmond Technical Committee. Pursuant to RZC 21.76.050.B and RZC 21.76.060.I.1, the Hearing Examiner is authorized to conduct open record appeal hearings and issue decisions on appeals from Type II Technical Committee decisions, including short plats.

Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, within 21 days after the close of the record for the Type II appeal, 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 Technical Committee. 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 II decision is not supported by a preponderance of the evidence or was clearly erroneous.

<u>Conclusions Based on Findings</u>:

1. The Appellants presented a substantial amount of evidence questioning the accuracy of the Applicant's tree inventory.[7] However, Appellants' submitted tree evidence failed to definitively demonstrate error in Mr. Shoffner's assessment that Trees 3 and 4 should be considered non-viable and therefore do not require approval of landmark tree removal exception requests. Even assuming that Ms. Cohen's tree inventory assessment is more accurate than Mr. Shoffner's, the short plat's tree preservation plan as approved satisfied the requirements of Redmond's tree preservation ordinance, which are met by retaining 35% of significant trees on-site. As amended since approval through the civil construction review process, the tree preservation plan continues to satisfy the City's tree preservation ordinance by retaining more than 40% of significant trees on-site using Ms. Cohen's assessment. Off-site trees are not included in tree inventories. Contrary to Appellants' contention that post-approval changes mandate restarting at notice of application, it is standard procedure for the level of engineering detail including such determinations as final location of foundations in relation to tree driplines, and thus the determination of whether an impacted tree should be removed, to be decided after land division approval through civil construction review. As proposed, tree replacement figures were correct based on the number and types of healthy significant trees proposed to be removed. The landmark tree removal exception request was properly granted, because retention of Trees 6 and 7 would require sacrifice of a lot allowed by the underlying zoning and would interfere with required frontage improvements. The number of replacement trees that will eventually be planted on-site is one of the items that is finally decided after land division approval, after it is known whether impacted trees can safely be retained. *Findings 2, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26*.

2. Appellants' attempt to show error in the preliminary stormwater management plan was also unsuccessful. The plans and information submitted were sufficient to determine the feasibility of managing stormwater from contemplated conceptual development. As actual proposed development becomes specific, so too would review of compliance with the technical details of applicable regulations. This is not an unusual series of events or some kind of break for the Applicant; land use approval precedes final engineering in all subdivisions. The information offered by Appellants failed to demonstrate that the project is not capable of complying with all applicable stormwater management requirements prior to construction. *Findings 2, 11, 12, 31, 32, 33, 34, 35, 36, and 37*.

3. The missing tree preservation plan from the notice of application received by Ms. Yates does not require reversal of the Technical Committee's approval of the short plat and restarting the process at notice. While notice of application may have been incomplete in

[7] Unfortunately, none of the three tree experts appeared to testify at hearing and thus credibility and expertise can only be assessed based on the paper submittals.

some packets, the site plan presented with notice of application and the more conceptual plan circulated in the notice of neighborhood meeting, together with posted notice of application, were sufficient to inform Appellants that development affecting trees on the parcel was proposed. Planning Staff may want to take note of Appellants' suggestion that they should not be responsible for having read the notice of neighborhood meeting because the envelope did not alert them that its contents weren't junk mail; however, such a contention cannot successfully assign the error of unread mail on any party other than its recipient. Based on the procedural history and factual record, the Appellants enjoyed a full and complete opportunity to comment on and question the proposal specifically with regard to trees. They were sufficiently apprised to fully participate in this appeal hearing process, to which they brought expert opinions from two arborists. The alleged error in notice of application packets was not sufficient to require reversal of the Technical Committee decision. *Findings 2, 3, 4, 5, 11, 12, 14, 24, 29, and 30*.

4. Any part of the Appellants' contentions that amounts to a challenge to the adequacy of the applicable tree preservation, stormwater, or short plat review regulations is untimely and made in the wrong forum. Neither the Technical Committee as decision maker nor the Hearing Examiner as appellate reviewer has authority to hear challenges to the adequacy of the code applied in the case. Both are "creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Chaussee v. Snohomish County Council, 38 Wn. App. 630, 636 (1984)*. Such challenges must be made through appropriate processes to the City Council. More to the point, all City decision making bodies are required to apply the subdivision regulations in effect at the time of complete application (time of vesting). *RCW 58.17.033*.[8]

5. With respect, any evidence or argument not addressed in these findings and conclusions was not found persuasive.

DECISION

Based on the foregoing findings and conclusions, the appeal is **DENIED**. The Appellants have not satisfied the burden of proof to show that the short plat fails to satisfy any applicable codes or regulations. The City's August 12, 2015 conditional approval of the Nouri Three-Short Plat File No. LAND-2014-01980 is affirmed.

Decided December 14, 2015.

By: 

Sharon A. Rice
City of Redmond Hearing Examiner

[8] *RCW 58.17.033 Proposed division of land — Consideration of application for preliminary plat or short plat approval — Requirements defined by local ordinance.* (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official. (2) The requirements for a fully completed application shall be defined by local ordinance.