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BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND

In the Matter of the Appeal of
Leonard Steiner

of a March 27, 2015 SEPA Determination of
Non-Significance and the September 21, 2015
Notice of Decision Approving the Ellsworth
Short Plat

No. LAND-2014-01966
SEPA-2014-01967

APPLICANT'S PREHEARING BRIEF
AND MOTION TO DISMISS

I. INTRODUCTION

Appellant Leonard Steiner has appealed the City of Redmond's ("City's") approval of the Ellsworth Short Subdivision ("Project"), an 8-lot short plat on a 1.53-acre site located in the City's "Residential Innovative" zoning district ("RIN") within the Willows Rose Hill Neighborhood. The Project required Short Plat approval under Redmond Zoning Code ("RZC") Chapter 21.74 and review under the State Environmental Policy Act ("SEPA"), RZC Chapter 21.70.

1 The City's SEPA determination was issued on March 27, 2015. The City's Technical
2 Review Committee issued the Short Plat approval decision on September 21, 2015. The
3 Appellant submitted comments during the public review process and filed timely appeals of both
4 decisions.

5
6 Mr. Steiner's SEPA appeal, filed on April 6, 2015, raised issues related to site vegetation,
7 stream setbacks and wildlife, and it requested that the City prepare an Environmental Impact
8 Statement ("EIS"). Mr. Steiner's short plat appeal, filed on September 28, 2015, raised these
9 same issues, in addition to issues involving tree retention, critical areas, and site drainage. This
10 appeal reiterated the request for an EIS and added a request that the applicant, Quadrant Homes,
11 reduce the number of lots.

12
13 On October 24, 2015, pursuant to the Hearing Examiner's Prehearing Order, Mr. Steiner
14 provided a "clarification of the issues on appeal." This statement provided more detail about Mr.
15 Steiner's concerns related to streams, tree retention, drainage, and wildlife, but it did not contain
16 specific City Code citations as required by the Examiner's Order. In addition, Mr. Steiner has
17 identified no expert witnesses, exhibits, or any factual information to present at hearing.

18
19 The City thoroughly reviewed the Project under SEPA and all applicable City Code
20 standards, including the City's short plat and critical area requirements. As part of the SEPA
21 review for this project, Quadrant completed several studies, including a Geotechnical Report
22 dated February 17, 2015, a Critical Area Study and Mitigation Plan dated June 29, 2015, a
23 Wildlife Report dated June 30, 2015, a preliminary Drainage Report dated July 1, 2015, an
24 Arborist Report dated August 10, 2015, and a Tree Preservation Plan dated August 11, 2015. The
25 City conducted a thorough review of these reports and the other application materials before it
26 issued its decisions on the Project. The City's decisions were issued in compliance with City

1 Code, and there is no basis to require an EIS or require a reduction in the number of lots. The
2 City's decisions should be affirmed.

3 II. FACTS

4 The facts in this matter have been established through the official City record on the short
5 plat application, which include the SEPA checklist, related technical reports, the DNS and the
6 decision of the Technical Review Committee approving the short plat.
7

8 III. ARGUMENT

9 A. The City's DNS was not clearly erroneous.

10 1. Appellants must show that the DNS was clearly erroneous.

11 SEPA and the City Code require the Hearing Examiner to give "substantial weight" to the
12 City's decision to issue a DNS. RCW 43.21C.090; RZC 21.70.190.F.1; *King County v. Central*
13 *Puget Sound Growth Mgm't Hrgs. Bd.*, 91 Wn. App. 1, 30, 951 P.2d 1151 (1998). The burden is
14 on the Appellant to overcome the deference required to be given to the City's decision. *Brown v.*
15 *Tacoma*, 30 Wn. App. 762, 764, 637 P.2d 1005 (1981).
16

17 Courts have interpreted this statutory mandate to require the application of the "clearly
18 erroneous" standard when reviewing an agency's decision to issue a DNS. *Murden Cove*
19 *Preservation Ass'n. v. Kitsap County*, 41 Wn. App. 515, 523, 704 P.2d 1242 (1985); *Cougar*
20 *Mountain Ass'n. v. King County* 111 Wn.2d 742, 747-749, 764 P.2d 264 (1988); *Indian Trail*
21 *Property Owner's Ass'n. v. City of Spokane*, 76 Wn. App. 430, 431, 886 P.2d 209 (1994).
22

23 Under the clearly erroneous standard, reviewing bodies do not substitute their judgment for those
24 of the agency and may invalidate the decision only when left with the definite and firm
25 conviction that a mistake has been committed. *Cougar Mountain, supra*, 111 Wn.2d at 747;
26 *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978); *Ass'n of Rural Residents v.*
27

1 *Kitsap County*, 141 Wn.2d 185, 4 P.3d 115 (2000); *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31
2 P.3d 703 (2001).

3 To prove that a decision was clearly erroneous, an appellant must produce affirmative
4 evidence showing that significant adverse impacts will occur as a result of the project.
5 Specifically, where an appellant claims that a city failed to adequately identify or mitigate
6 adverse impacts, the appellant must produce evidence that such impacts will actually exist for a
7 decision to be overturned. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719-720 (2002);
8 *Moss v. City of Bellingham, supra*, 109 Wn. App. at 31. Mere complaints, or claims without the
9 production of affirmative evidence proving that the decision was clearly erroneous, are
10 insufficient to satisfy an appellant's burden of proof as a matter of law.
11

12
13 **2. The Appellant cannot meet its burden of showing that the DNS was clearly
14 erroneous with regard to any of the alleged impacts.**

15 In his appeal documents, Mr. Steiner alleges that the Project would have adverse impacts
16 related to stream buffers, trees, drainage, and wildlife. But these claims are vague, and they are
17 not supported with reference to specific City Code citations or facts. In addition, Appellant has
18 identified no witnesses or exhibits to support its allegations. Without producing evidence,
19 Appellant cannot meet its burden, and its SEPA claims must be rejected.
20

21 **B. The decision by the Technical Review Committee to approve the short plat was not
22 erroneous.**

23 The City's Technical Review Committee issued a detailed decision approving the short
24 plat on September 21, 2015. Decisions of the Technical Review Committee are "Type II"
25 decisions under City Code. On appeal, the Hearing Examiner is required to give decisions of the
26 Technical Review Committee "substantial weight." RZC 21.76.060.I.4.
27

1 **1. The Project is consistent with the City’s Short Plat requirements.**

2 The short plat is located in the “Residential Innovative” Single-Family Urban Residential
3 Zone, which is intended to “promote single-family housing consisting of smaller dwelling units
4 to respond to changing household sizes and ages,” and “blend new development with existing
5 residential development to help maintain neighborhood character.” The density allowed within
6 the zone “shall be four to five dwelling units per gross acre depending on the size of the site and
7 the size of dwellings proposed.” RZC 21.08.070. The City’s development standards for the RIN
8 zoning district are contained in RZC 21.08.170(B). The City’s decision on the short plat
9 confirms that “the proposal complies with all of the site requirements for the RIN zone.”
10
11 *Technical Committee Short Plat, Notice of Decision, pg. 6.*

12
13 The City’s short plat review included a review of critical areas, including wetlands,
14 stream corridors and wildlife habitat, and tree protection. The City’s critical area review
15 included review of the Wetland Resources reports, which documented a stream and steep slopes
16 on the southeast property corner. *Technical Committee Short Plat, Notice of Decision, pg. 8.*
17
18 The Project proposed to use buffer averaging and a buffer enhancement planting plan, resulting
19 in approximately 8,925 Sq. ft. of enhanced stream buffer. The sensitive areas and their
20 associated buffers will be held in a protected separate tract. *Technical Committee Short Plat,*
21 *Notice of Decision, pg. 9.* The City concluded that the Project complies with the City’s critical
22 area regulations, and that impacts will be adequately mitigated.

23
24 With respect to tree retention, City Code requires at least 35 percent of significant trees
25 and all landmark trees on the site to be retained. RZC 21.72.060. Here, Quadrant proposed to
26 retain 42 percent of the healthy significant trees on the site, which includes two healthy landmark
27 trees. However, one healthy landmark tree was approved for removal through the exception

1 process in Chapter RZC 21.72.090. The City's review confirmed that the exception request met
2 the approval criteria in City Code.

3 Finally, the Technical Review Committee's short plat approval decision confirms that the
4 Project complies with all of the short subdivision approval criteria in RZC 21.74.030(B).

5
6 **2. Appellant cannot meet its burden to show that the City's short plat decision
was erroneous.**

7 Again, the Appellant has not alleged noncompliance with any specific City Code
8 provisions, and it has not identified any expert witnesses or evidence to support its claims.
9 Accordingly, Appellant cannot meet its burden to show that the City's short plat approval
10 decision was in error, given the substantial weight the Hearing Examiner must give that decision.
11

12 **IV. RELIEF REQUESTED**

13 Appellant cannot meet its burden of proof on any issue identified in the appeals. The
14 proposed Project complies with City Code development standards, including density standards, and
15 it complies with the City's critical area and tree retention standards. In addition, the City's DNS
16 was not erroneous. The Appellant has not identified code citations or identified any witnesses or
17 evidence to support its claims. For that reason, Quadrant asks the Hearing Examiner to dismiss the
18 appeals and uphold the City decisions approving the Project.
19

20 Dated this 16th day of November, 2015.

21
22 MCCULLOUGH HILL LEARY, P.S.

23
24 By: 

25 Courtney E. Flora, WSBA #29847
26 Attorneys for Quadrant Homes
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