

**BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND**

In the Matter of the Appeal of)	
)	
Leonard Steiner)	No. LAND-2014-01966
)	SEPA-2014-01967
)	
of a March 27, 2015 SEPA)	
Determination of Non-Significance and)	FINDINGS, CONCLUSIONS,
the September 21, 2015)	AND DECISIONS
Notice of Decision Approving the)	
<u>Ellsworth/Heather's Ridge South Short Plat</u>)	

SUMMARY OF DECISIONS

Appellant did not provide evidence demonstrating that the City SEPA Responsible Official's environmental threshold determination was in error. The appeal of the SEPA determination of non-significance (DNS) issued March 27, 2015 is denied.

Evidence in the record does not support the conclusion that the application materials submitted and process provided fall short of the requirements of the Redmond Zoning Code for short plat approval. Because no clear error is shown, the appeal of the Type II decision is denied.

SUMMARY OF RECORD

Request:

The March 27, 2015 State Environmental Policy Act (SEPA) threshold determination of non-significance (DNS, SEPA-2014-01967) was timely appealed on April 6, 2015 by Leonard Steiner.

The September 21, 2015 Technical Committee Notice of Decision approving the Ellsworth Short Plat (LAND-2014-01966) was timely appealed by Leonard Steiner on September 28, 2015.

Pre-Hearing Procedures:

Consistent with Redmond Zoning Code (RZC) 21.76.050.E.6, the appeals were consolidated. A pre-hearing conference was convened on October 21, 2015 to clarify issues and establish a pre-hearing and hearing schedule. Consistent with the ensuing October 21st Order Setting Hearing and Pre-Hearing Schedule, the Appellant timely submitted a "clarification of the issues on appeal." The Applicant timely submitted a dispositive motion on November 16, 2015 seeking to dismiss the appeal of Leonard Steiner in the above-captioned matter of the March 27, 2015 DNS and both Technical Committee Approvals. Appellant submitted response to the motion on November 17, 2015. The motion was denied.¹

¹ The Applicant's motion to dismiss both appeals was not granted due to the fact that the Redmond Zoning Code does not confer explicit authority to the Examiner to dismiss an appeal before conducting the open record appeal hearing even in cases where no pre-hearing showing of affirmative evidence of error is offered by the appellant.

Hearing Date:

The City of Redmond Hearing Examiner convened an open record hearing on the consolidated appeals on November 20, 2015.

Testimony:

During the open record hearing, the following individuals presented testimony under oath:

Called by the Appellant:

Leonard Steiner

Called by the City:

Heather Maifski, Redmond Associate Planner
Steven Fischer, Redmond Planning Manager

Called by the Applicant:

Corey Watson, Quadrant Homes
Matt Perkins, Quadrant Homes
Matthew Merritt, PE, Project Engineer, LDC Inc.
Steven M. Anderson, Senior Project Manager/Planner, LDC Inc.
Jim Rothwell, Senior Ecologist, Wetland Resources, Inc.
Scott Walters, Associate Ecologist and Wildlife Biologist, Wetland Resources, Inc.
Susan Prince, Arborist, Creative Landscape Solutions

Attorney Representation:

The Applicant was represented by Courtney E. Flora, McCullough Hill Leary P.S.

Exhibits:

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

Appellant Leonard Steiner Exhibits (identified in Findings by A prefix)

1. Notice of Application/Certificate of Public Notice, dated December 8, 2014 and Determination of Non-Significance/Certificate of Public Notice, dated March 27, 2015
2. Response to Motion to Dismiss, filed November 17, 2015
3. Clarification of Issues, filed October 26, 2015
4. Alternative Site Plan, filed November 20, 2015

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

1. Redmond Planning Department Technical Committee Report, dated November 12, 2015, with the following attachments:
 1. Vicinity Map
 2. Legal Description
 3. Notice of Application/Certificate of Public Notice, dated

4. Determination of Non-Significance/Certificate of Public Notice, dated March 27, 2015
 5. SEPA Comments
 6. SEPA Appeal form submitted by Leonard Steiner, on April 6, 2015
 7. Short Plat Notice of Decision, dated September 21, 2015
 8. Appeal Form submitted by Leonard Steiner on September 28, 2015
 9. Hearing Notice, dated November 3, 2015
 10. Public Comments
 11. Request for Additional Information, dated November 10, 2014
 12. Second Request for Additional Information, dated April 28, 2015
 13. Plan Set
 14. Tree Health Assessment prepared by Susan Prince, dated August 10, 2015
 15. Wildlife Report prepared by Wetland Resources, Inc., dated June 30, 2015
 16. Hearing Examiner Decision regarding Alteration of Geologic Hazard Areas, dated August 4, 2014
 17. SEPA Checklist
 18. Critical Area Study and Mitigation Plan for Heather's Ridge South, dated June 29, 2015
 19. Tree Exception Approval Letter, dated August 25, 2015
 20. NE Rose Hill Transportation Connections Plan
 21. Critical Areas Study from Alterations of Geologic Hazard Areas Land Use Application prepared by Wetland Resources, Inc., dated September 24, 2013
 22. Neighborhood Meeting Sign-In Sheet, dated March 12, 2015
 23. Alterations to Geologic Hazard Areas LAND
2. PowerPoint Presentation (10 slides)

Applicant Steven Anderson Exhibits (identified in Findings by Q prefix)

1. Heather's Ridge South Cover Sheet and Site Plan
2. Ellsworth Short Plat Notice of Decision, dated September 21, 2015
3. SEPA Determination of Non-Significance, dated March 27, 2015
4. SEPA Appeal, filed April 6, 2015²

² At hearing, it was not noticed that Applicant's exhibit list had a typo in it at Exhibit 4 – an extra hard return – that caused an error in exhibit numbering, resulting in one too many exhibit numbers on their list. The two documents at hearing – the resumes of James Rothwell and Scott Walters – should have been identified as Exhibits Q15 and Q16 rather than as Q16 and Q17. This numbering error is corrected here.

5. Notice of Decision Appeal, filed September 28, 2015
6. Critical Area Study and Mitigation Plan, Heather's Ridge South, dated February 23, 2015
7. Critical Area Study and Mitigation Plan, Heather's Ridge South, dated June 29, 2015
8. Wildlife Report, dated January 30, 2015
9. Wildlife Report, dated June 30, 2015
10. Preliminary Drainage Report for Ellsworth Residential Plat, dated July 1, 2015
11. Heather's Ride Tree Exception Letter from Susan Prince, dated June 23, 2015
12. Final Arborist Report by Susan Prince, dated August 10, 2015
13. Tree Preservation Plan, dated August 11, 2015
14. Geotechnical Report for Heather's Ride South, dated February 17, 2015
15. James Rothwell Resume
16. Scott Walters Resume

Other Documents in the Record

- Hearing Examiner's Order Requiring Pre-Hearing Conference, dated October 6, 2015
- Hearing Examiner's Order Setting Pre-Hearing Schedule, dated October 21, 2015
- Applicant's Pre-Hearing Brief and Motion to Dismiss, dated November 16, 2015
- Appellant's Response to Motion to Dismiss, dated November 17, 2015
- City of Redmond's Witness and Exhibit List
- Applicant's Witness and Exhibit List
- Applicant's Notice of Appearance, dated October 26, 2015

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

FINDINGS

Background and Decisions Appealed From

1. The Ellsworth eight-lot short plat proposal would subdivide the 1.53-acre parcel at NE 100th Street and 134th Avenue NE in Redmond into six single-family residential lots and one multi-family (duplex) residential lot, for a total of eight dwellings. The subject property is located in the Willows/Rose Hill Neighborhood as identified by the Comprehensive Plan Map N-GL-1. It has a Residential Innovative (RIN) zoning designation, which zone allows for five dwellings per gross acre. The northeastern corner of the subject property is encumbered with a Class IV stream, which flows off-site adjacent to the eastern boundary of the site and requires a 36-foot buffer pursuant to the Redmond critical areas ordinance (CAO). There is also a steep slope in the southeast corner of the site. *Exhibits C1, C1.4, C1.7, and C2.*

2. The formal subdivision application was filed November 3, 2014. On December 8, 2014, notice of application was distributed to owners of property within 500 feet of the site, providing a public comment period that extended through December 29th. One public comment was submitted to the City. On March 12, 2015, the Applicant conducted a neighborhood meeting, at which questions regarding wildlife and tree retention were discussed. In reviewing the proposal's compliance with the requirements of the State Environmental Policy Act, the City of Redmond's SEPA Responsible Official considered the complete application materials and an environmental checklist. Determining that the project would not result in probable, significant, adverse environmental impacts, the Responsible Official issued a determination of non-significance (DNS) on March 27, 2015. *Exhibits C1, C1.3, C1.4, C1.5, C1.23 and C2.*
3. Leonard Steiner (Appellant) timely appealed the DNS on April 6, 2015. *Exhibit C.6.* Consistent with RZC 21.76.050(E)(6), the appeal was placed on hold pending the outcome of the short plat decision to allow for a single consolidated hearing as required by City code.
4. The proposal included a request for approval of a buffer averaging plan that would reduce the width of the required buffer in some portions of the proposed lots and widen it in other areas. Redmond Staff reviewed the Applicant's submitted critical areas study and mitigation plan, determined that the proposal comported with criteria established in the Redmond Zoning Code (RZC) at 21.64.010(I) and 21.64.020(B)(6), and approved the buffer averaging plan with conditions. *Exhibits C1 and C1.18.* On September 21, 2015, the Technical Committee approved the eight lot short plat and issued a notice of decision. *Exhibit C1.7.*
5. On September 28, 2015, the Appellant timely appealed the Notice of Decision approving the short plat. *Exhibit C1.8.*

Appeals

6. In the April 6th DNS appeal document, the Appellant alleged the following issues on appeal:

An arborist was employed to determine plant value on the property rather than an ecologist. His only assessment was living or dying trees. The sewer line install and tree removal on the property has already disturbed wildlife on the property. None of the wildlife issues are being addressed by this [determination of non-significance].

For relief in the SEPA appeal, the Appellant requested that an environmental impact statement be required. *Exhibit C1.6.*

7. In the September 28, 2015 appeal of the Notice of Decision of Short Plat approval, the Appellant identified the following issues on appeal:

The Shoreline Management Act was created to protect streams. Streams are defined as sensitive areas. Setbacks were established to protect these streams. Building and lots should not be allowed in these setback areas. In fact I believe that number of buildings near sensitive areas should be limited. The GMA says allow max development but this quantity should be reduced or halved near sensitive areas.

The State Environmental Policy Act was created to allow cities to determine the value of property to wildlife. In this case historically the property was used by deer, coyote, raccoons, opossums, Douglas squirrels, and numerous bird species. The developer removed two large dead snags that were home to at least 4 diff. woodpecker species. An EIS should still be prepared for this site.

An environmentalist should be hired to evaluate trees rather than an arborist. Wildlife value of trees is different than living or dead. 3 cottonwood and 7 cedars in the path of proposed 133rd Street should be retained as wildlife trees. All trees in the corridor of the stream are protected through the SMA.

All of the properties to the west of this land drain onto this land. All are on septic, plus stormwater. This property has traditionally been a wetland. It supports many frog species and drgonflies and I would guess salamanders.

The developer was allowed to install a sewer line on the property and fill it is with gravel (rocks) in an attempt to drain the land. I don't think it worked

The property needs an EIS and the City needs to address all these issues.

Exhibit C1.8.

8. Pursuant to the Order following the pre-hearing conference, conducted October 21, 2015, the Appellant was required to clarify issues on SEPA appeal and provide citations to Redmond Zoning Code and other applicable regulations or laws violated by the DNS and the short plat approval. His submittal stated the following:

SMA: A buffer zone is established to protect the vegetation around a stream or wetland. 100% of this vegetation is to be preserved. Identifying one tree in this area as significant tree does not constitute a 35% tree retention on the develop (sic) land as defined by the Redmond statutes. If an EIS was performed on the site it would have shown That 4 cottonwoods and 8 western red cedar should have been preserved as wildlife trees on the site. The amount of construction activity with house building Resultant dogs and cats with human occupation would have a very destructive affect on the wetland values in the area. The stream area should be treated as a sensitive area and the houses restricted to maybe 4 instead of 8 and the access road goes around the cedars rather than have them eliminated.

SEPA: The land does not “perk” (sic) so when the developer put In the sewer line they placed rock over the line to help drain the land. This may not do the job as all the lands to the west of this property are on septic and drain to this property. Once houses are built and sold this problem is left to the property owner.

An EIS done on the property would have shown that at one time the following wildlife occurred on the property and some still do. Deer, coyote, opossum, Douglas squirrel, grey squirrel, chipmunk, and long tailed weasel. Birds include crows, stellars jays, robins, dark eyes junko, varied thrush, chestnut backed chickadee, spotted towhee, California quail, bewicks wren, cedar waxwing, red breasted nuthatch, house finch, evening grosbeaks, blackheaded grosbeaks, Wilson’s warbler, American goldfinch, and at times migrants come through. The removed dead trees supported hairy and downy woodpeckers plus pileated woodpeckers and northern red shafted flickers and occasional red naped sapsuckers. The wet area supports a large population of frogs and dragonflies plus other aquatic vertebrates or insects.

The state wildlife department states that their goal is to keep common species common. This cannot be done by eliminating important habitat. SEPA was written to ensure that “environmental amenities will be given appropriate consideration in decision making along with economic and technical considerations.”

GMA: The Growth Management Act was written to ensure that maximum growth was consider in the urban area but only after all other values were considered in the project area. At no time was it intended to covert urban neighborhoods into barrack style housing.

Exhibit A3. The Appellant attached photos to his clarification submittal. The photos are labeled "one significant tree", "one significant fir", and "to be removed trees". *Exhibit A3.*

9. In his testimony, the Appellant asserted that he was around when SEPA and the Shoreline Management Act were enacted. He testified that has lived adjacent to the subject property for 45 years and has for all that time heard a chorus of frogs. He is concerned that the site plan in the record shows no trees on the completed development, calling it a destruction program rather than a preservation program. He stated that the Applicant should be required to retain trees, even the dead ones, to preserve wildlife habitat and that the Applicant should berm along the stream. He argued that the SEPA checklist was in error and is in adequate because it only identifies songbirds and deer on-site. He testified as to a long list of species he has personally observed on the subject property and asserted that the site’s valuable wildlife habitat should be retained. *Steiner Testimony.* The Appellant offered a site plan showing five units that he feels is more appropriate to the site. *Exhibit A4.*

Evidence on which the City Based the DNS and the Short Plat Approval

10. Together with other application materials, the Applicant submitted a tree health assessment prepared by a qualified professional arborist, which assessed the health of each tree on the property. The tree health assessment determined that of the 67 significant trees on-site, 48 were unhealthy and not able to be retained. Of the 19 viable/healthy trees, the proposal would remove eight and potentially impact three others, retaining eight healthy trees in Tract C. This tree retention equals more than 40% of the healthy trees on-site, exceeding the City's minimum requirement of 35% tree retention. *Exhibits C1, Q13, and C1.14; Prince Testimony.*
11. Three of the viable trees to be removed are located in the path of proposed 133rd Avenue NE: tree 1548 (a 42-inch Western Red Cedar), tree 1589 (a 20-inch Black Cottonwood), and tree 1590 (a 21-inch Black Cottonwood). *Exhibit C1.13, Sheet 5.* Tree 1548 was approved for removal through a Tree Exception Request. *Exhibit C1.19.* All other existing trees in the path of proposed 133rd Avenue NE were deemed to be unhealthy trees by the arborist. Per the City's tree preservation ordinance, unhealthy trees are not defined as significant trees and are not required to be retained for wildlife or any other purpose. *Exhibit Q13; Prince Testimony.* The proposed road complied with the NE Rose Hill Transportation Connections plan. *Exhibit C1.20; Chow Testimony.*
12. The Applicant submitted a critical areas study prepared by a qualified professional. *Exhibits Q8, C1.18, and Q15.* The critical areas study concluded that the site did not contain regulated wetlands. It delineated the corridor and buffer for the stream on-site, and classified it as a non-fish bearing Class IV stream consistent with RZC 21.64.020(2)(d). Class IV streams must be provided with a 36-foot no disturb buffer from the ordinary high water mark, consistent with RZC 21.64.020(B)(3). *Exhibits Q8 and C1.18.* The critical areas report submitted for the 2014-approved sanitary sewer line extension project (LAND-2013-01665) also confirmed that no wetlands exist on the property. *Exhibit C1.21.*
13. The Applicant provided a wildlife report prepared by a qualified professional, who conducted fieldwork on which the report was based. *Exhibits Q10 and Q16.* The purpose of the wildlife report was to determine whether wildlife species or habitats present on-site would limit development. The wildlife report identified three distinct habitat units in the vicinity of the subject property: Unit A, a complex sloped forest; Unit B, an invasive scrub-shrub community; and Unit C, disturbed pasture. Habitat Unit A provides high-quality, mostly native habitat for urban wildlife and acts as a biodiversity corridor that connects the on-site habitat to a broader, complex habitat matrix extending off-site. The location of the Class IV stream qualifies the majority of Unit A as a habitat conservation area (HCA), which is regulated by the City's critical areas ordinance (CAO). Portions of habitat Unit A located outside of the Class IV stream and the associated buffer are not regulated as HCA. Pursuant to RZC 21.64.020(A)(2), HCAs are classified according to their characteristics, function, and value, and/or their sensitivity to disturbance. The stream-delineated HCA located on-site is classified as a core preservation area, because it is protected through other regulatory mechanisms. All of the on-site core preservation area would be permanently protected in a native growth protection A (NGPA) to be maintained in Tract C. The on-site

portions of habitat Unit A outside the stream buffer are not regulated and thus are not required to be retained. *Exhibit Q10, C1.15; Walters Testimony.*

14. The Applicant's environmental checklist identified birds, songbirds, and deer on the site. *Exhibit C1.17.* The submitted wildlife report evaluated the presence of wildlife species on-site, as well as those predicted to occur, and identified the presence of: golden-crowned kinglet, ruby-crowned kinglet, spotted towhee, song sparrow, dark-eyed junco, pacific wren, crows, and black-capped chickadee on this site. None of these species is listed as endangered, threatened, or protected on the Federal, State, or local lists. However, habitat for these and the other mammalian, reptile, and bird species present would be retained permanently in the NGPA in Tract C. *Exhibits Q10 and C1.17; Walters Testimony.* Planning Staff reviewed the Applicant's submittals for compliance with the criteria in RZC 21.64.020(2) and determined that the project had satisfied reporting and other requirements of the critical areas ordinance. *Exhibit C1; Maiefski Testimony.*

15. Pursuant to RZC 21.64.020(B)(6)(e), stream buffer width may be reduced if the reduction is less than 25 percent of the standard buffer width or 25 feet, whichever is greater. In the case a Class IV stream, buffer width cannot be reduced to less than 27 feet. As approved, the required 36-foot buffer to the Class IV stream would be modified through the City's buffer averaging provisions. *RZC 21.64.020(B)(6).* Approximately 220 square feet of stream buffer would be impacted by grading activities and installation of two storm water outfall pipes extending into the stream buffer that would discharge onto rip-rap dispersion pads. Additionally, approximately 1,215 square feet of buffer width in multiple small sections would be reduced (impacted by development). The reduced width would be compensated by provision of 1,303 square feet of extra buffer width in other multiple small locations. No buildings are proposed in the stream buffer. A rockery/wall is proposed at the outside edge of the adjusted buffer. At no point would the averaged buffer width be less than 27 feet. Each lot would have open space abutting Tract C. To compensate for the impacts of buffer averaging, 8,925 square feet of buffer enhancement would be provided. The northernmost portion of the on-site stream buffer is dominated by dense Himalayan blackberry, an invasive shrub that would be removed as part of the enhancement plan. Ninety native trees and 264 native shrubs would be planted and monitored for success in the provided buffer area; any non-surviving plants would be replaced following the first year of monitoring. Desirable native volunteers, such as red alder and black cottonwood, would be allowed to contribute up to 20% of the cover in the buffer; however, higher percentages of native volunteers would be managed to ensure species diversity for habitat purposes. Monitoring would continue for five years. These enhancements are in addition to retention of viable vegetation in the NGPA. *Exhibits Q8, C1.18, and C1.13, Sheet 2; Rothwell Testimony.*

16. As determined by the Technical Committee, the short plat complies with the requirements established in RZC 21.64.020(B)(6) for preservation of the stream and the riparian corridor and the mitigation requirements as identified in Appendix 1(G) of the RZC for mitigation of impacts to the stream buffer. *Exhibit C1; Maiefski Testimony.*

17. Planning Staff contended that an environmental impact statement is only required for an action if the zoning code does not contain regulations adequately addressing environmental impacts. The only impacts identified for this project were impacts to the stream buffer through buffer averaging; these impacts are adequately mitigated through the buffer averaging and mitigation plan, as detailed above. The approved short plat also complies with the requirements for protection of the core preservation area through provision of the NGPA in Tract C. *Exhibit C1; Maiefski Testimony; Fischer Testimony.*
18. The sewer line installation and associated tree removal mentioned in the appeals was conducted pursuant to a previous land use approval in 2014 known as the Ellsworth Geologic Hazard Area Alteration (LAND-2013-01665). *Exhibit C1.16.* To the extent that any appeal issues are related to that action, they are untimely.
19. Regarding drainage and gravel placed on-site during the previous project: 1.89 off-site acres immediately west of the subject property drain onto the site. To address this, the proposal includes a French drain along the project's western boundary that would collect sheet flow and convey it via dedicated pipeline to a stormwater catch basin discharging to the stream. *Exhibits C1.13, Sheet 3 and Q11.* The previous sanitary sewer installation project on-site utilized a gravel construction access road and staging area; the gravel was not expected to drain the property. *Exhibit C1.23.*
20. The unnamed Class IV stream on-site is not subject to the jurisdiction of the Shoreline Management Act. *Exhibit C1; Rothwell Testimony.*

CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050.C, Short Plat approvals and SEPA Environmental Threshold Determinations are both 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 and Standards for Review

SEPA Appeal

The State Environmental Policy Act (Chapter 43.21C RCW or "SEPA") specifies the environmental review procedures the City must follow for proposals that may have an impact on the environment. One purpose of SEPA is to ensure that "presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations." Every proposal that may impact the environment (unless it is exempt from the Act) must undergo some level of environmental review. *RCW 43.21C.030(b).*

The SEPA threshold determination is a determination as to whether a proposal is "likely to have a probable significant adverse environmental impact." *WAC 197-11-330.* If the responsible official determines that a proposal will not have a probable significant adverse environmental

impact, a determination of non-significance (DNS) is issued. If the responsible official determines that a proposal *will* have a probable, significant adverse environmental impact, a determination of significance (DS) is issued and an environmental impact statement (EIS) must be prepared. SEPA provides a process in which a mitigated determination of non-significance (MDNS) may be issued to address identified probable significant adverse environmental impacts so that an EIS need not be prepared. *WAC 197-11-350*.

“Significant” as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on the environment. Significance involves context and intensity and does not lend itself to a formula or a quantifiable test. *WAC 197-11-794*. Several marginal impacts when considered together may result in a significant adverse impact. *WAC 197-11-330(3)(c)*.

“Probable” means likely or reasonably likely to occur. The word probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. *WAC 197-111-782*.

The lead agency must make its threshold determination “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” *WAC 197-11-335*.

Clear error is the standard of review applicable to substantive decisions under SEPA. *Cougar Mt. Assocs. v. King County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988). The determination by the governmental agency is clearly erroneous only if the reviewing tribunal is left with “the definite and firm conviction that a mistake has been committed.” *Id.* at 747 (quoting *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, (1978)).

The burden of proof is on the Appellant to show that the proposal will have probable, significant adverse environmental impacts. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002).

The determination of the City's Responsible Official shall be accorded substantial weight in appeals. *RZC 21.76.060.I.4*.

Short Plat 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.

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Conclusions Based on Findings:

1. **SEPA Appeal:** In order to succeed in a challenge of an environmental threshold determination, an appellant must show that the City's environmental threshold determination was based on misleading or inaccurate information, that the SEPA Official did not exercise appropriate judgment based on the submitted information, or that the project will result in probable, significant, adverse environmental impacts. In order to make such a showing, an appellant must produce affirmative evidence that significant adverse impacts would result. In judging any such allegations, substantial weight must be given to the decision of the Technical Committee.


In the present case, the Appellant was under a duty to provide evidence leaving the decision maker with the firm and definite conviction that a mistake was made. However, aside from his assertions based on personal observation, experience, and opinion, the Appellant provided no evidence of probable, significant, adverse environmental impacts. The Appellant did not provide evidence showing that the Technical Committee failed to properly review the application materials, or that the Committee failed in its exercise of appropriate judgment in the course of SEPA review. The record as a whole contains sufficient information to support the Technical Committee's determination that probable, significant, adverse impacts are addressed to a point of non-significance for the purposes of SEPA through application of existing ordinances. Based on the record created at the open record appeal hearing, the decision maker is not left with a firm conviction that the DNS was issued in error. The DNS appeal must be denied. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.*

2. **Short Plat Appeal:** The Appellant's evidence does not demonstrate that the short plat fails to comply with applicable provisions of the RZC regarding critical areas, wildlife habitat, tree preservation, stormwater management, or density, or that the approval was inconsistent with applicable Comprehensive Plan policies, goals, and objectives. In absence of such evidence and in light of the substantial deference owed to the Technical Committee's decision, the appeal of the short plat approval must be denied. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.*

DECISIONS

Based on the foregoing findings and conclusions, both the appeal of the March 27, 2015 SEPA DNS and the appeal of the September 21, 2015 Notice of Decision approving the short plat are **DENIED**.

Decided December 8, 2015.



Sharon A. Rice
City of Redmond Hearing Examiner