

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

In the Matter of the Appeals of)	
)	
The Nokomis Club and Redmond Historical Society)	APPL NO. LAND-2015-00408
)	
of the February 17, 2015 Determination of Non-Significance (SEPA-2015-00017), and)	
)	
The Nokomis Club)	APPL NO. LAND-2015-00746
)	
Of the April 22, 2015 Revised Technical Committee Approval of a Site Plan Entitlement (LAND-2014-01610/SPE))	162TEN
)	DECISION ON RECONSIDERATION
)	
_____)	

Background

On August 7, 2015, the Redmond Hearing Examiner issued findings, conclusions, and decisions (Decision) in the above-captioned appeals, upholding the Technical Committee's SEPA determination of non-significance and the April 22, 2015 revised site plan approval.

On August 21, 2015, Appellant Nokomis Club timely requested reconsideration of the Decision. The Hearing Examiner requested responses from counsel for the Applicant and the City within five business days. Both responses were timely submitted.

Issues on Reconsideration

The request for reconsideration asserted the following errors of procedure and of fact:

- A. (Fact) That Kimberly Dietz offered false testimony regarding her communications with Todd Scott of the King County Historic Preservation Program, and that Ms. Dietz was not qualified to render an opinion pursuant to the Secretary of the Interior's standards and guidelines on professional qualifications to render the opinion in testimony that the building lacked architectural integrity;
- B. (Fact) That David Markley gave false testimony when he (as paraphrased in the request) "said that Village Square management had no issues with Vision 5";
- C. (Procedure) That the City did not make Kim Keeling, City Staff responsible for administration of the Vision 5 transportation management program, available for testimony despite listing her on the witness list; Appellants asserted they would not have agreed to the hearing date had they known Ms. Keeling would not be available;

- D. (Fact) Findings incorrectly state that Nokomis Club met in the building until 1999, which is untrue. Nokomis Club met there through 1995; and
- E. (Fact) Appellants contend that the use of the word "singular" to describe Nokomis Club contribution means that the "Club engaged in only minimal individual activity".

In support of contention A above, the Appellant offered a July 9, 2015 email from Mr. Scott.

In support of contention B above, the Appellant offered a March 2, 2015 email from Wendy Vance of Integrated to Robert Pantley, 162Ten Applicant.

Jurisdiction

The Redmond Zoning Code establishes the following procedure for requesting reconsideration of Hearing Examiner decisions in appeals of Type II land use decisions at RZC 21.76.060.I.5:

Request for Reconsideration. Any designated party to the appeal who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 10 business days after the filing of the request for reconsideration by either denying the request or issuing a revised decision. The decision on the request for reconsideration and/or issuing a revised decision shall be sent to all parties of record.

Discussion

Issues A and B:

In support of appeal issues A and B, the Appellant submitted two emails on reconsideration: a July 9, 2015 email from Todd Scott of King County Historic Preservation Program to Appellants, and a March 2, 2015 email from Wendy Vance of "Integrated" to Robert Pantley, 162Ten Applicant.

Regarding the email from Todd Scott, the Appellant attempted to offer this or a similar email at the time of Ms. Dietz's testimony. The document was not admitted due to Mr. Scott's unavailability for cross examination. Appellants had every opportunity to identify and call Mr. Scott (or other King County Staff) as a witness; he did not appear. This email was already precluded from admission, or if it was not the same email, it is still inadmissible for want of cross examination and untimeliness.

The March 2015 email from Ms. Vance was addressed to Mr. Pantley, not Mr. Markley. There is no evidence (or even argument) that Mr. Markey knew of the email at the time of his testimony. The email was available at the time of the hearing and was not offered. The Appellant could have called a representative from Village Square as a witness; none was offered and none appeared. The Vance email is untimely and is not admitted.

Additionally, a review of the contents of the emails does not convince the Examiner that if admitted they would be evidence competent to support the Appellant's assertion that Ms. Dietz

and Mr. Markley perjured themselves at hearing. The City's response to the reconsideration request includes transcription of Ms. Dietz's testimony relating to Mr. Scott. The Examiner agrees with the City that the request for reconsideration mischaracterizes Ms. Dietz's testimony. The Examiner also agrees that Mr. Markley was not the recipient of the March 2nd email and it could not, if admitted, prove his testimony false.

As to both assertions of false testimony, it is the responsibility of the hearing officer to judge the credibility of the various witnesses at a hearing. The Examiner does not believe that either witness knowingly testified to false information.

Issue C:

The assertion that Appellants would not have agreed to the hearing date had they known Ms. Keeling would be unavailable is confusing, as the hearing dates were selected weeks in advance of witness disclosure. Appellants did not identify Ms. Keeling as a witness on their own list, which would have indicated to the City that Appellants were relying on her presence. Appellants did not alert the City that they intended to call Ms. Keeling as a witness until after the beginning of the hearing. When she was not available (due to vacation), the City offered Mr. Marpert, who Appellants rigorously questioned and whose testimony the request for reconsideration does not challenge. The City's witness list identifies Ms. Keeling as a staff member the City "may call" as a witness. The request for reconsideration makes no citation to authority compelling the City to make available all witnesses on their witness disclosure list. No error of procedure is shown in the reconsideration request.

Issue D:

The Examiner either misheard testimony or mistyped the year that Nokomis Club ceased meeting at the 16210 building. This scrivener error will be corrected.

Issue E:

Unfortunately, Appellants misunderstood the use of the word singular in Conclusion 2, which stated:

Consistent with the requirements of RZC 21.20 and with recommendations from both the Washington State Department of Archaeology and Historic Preservation and the Washington Trust for Historic Preservation, the singular contribution of the women of the Nokomis Club to the City of Redmond would be memorialized through retention of distinctive elements of the building and pictorially.

The word singular was intentionally selected to reflect the Examiner's appreciation of and respect for the women of the Nokomis Club's unique, notable, distinguished contribution; it was not intended to imply that the Club had only one accomplishment. Apparently, the sentence can be read both ways. The word choice will not be changed on reconsideration, but the unintended double meaning will be noted for consideration in future decisions.

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Order on Reconsideration

Appellants have not shown error of fact of procedure sufficient to merit reconsideration. The request for reconsideration is respectfully denied, provided that the scrivener error in Finding 3 on page 10 shall be corrected to state that Nokomis Club used the building "until a 1995 remodel." This correction shall be accomplished by appending this decision on reconsideration to the August 7, 2015 Decision.

Ordered September 2, 2015.

By:



Sharon A. Rice
City of Redmond Hearing Examiner

The following items are included as attachments to this Decision on Reconsideration:

August 21, 2015 Request for Reconsideration
City's August 31, 2015 Response
Applicant's August 31, 2015 Response