BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND

In the Matter of the Appeals of **Keith Brewe,** **Rosemarie Ives, the Nokomis Club,** **Redmond Historical Society, and** **and Curtis Nelson** of the February 17, 2015 Determination of Non-Significance (SEPA-2015-00017), the April 2, 2015 Technical Committee Approval of a Site Plan Entitlement, and the April 22, 2015 Revised Technical Committee Approval (LAND-2014-01610/SPE)	)	Nos. SEPA-2015-00017 LAND-2014-01610/SPE **The 162TEN Appeal** ORDER GRANTING APPLICANT MOTION TO DISMISS THE APPEALS OF ROSEMARIE IVES AND CURTIS NELSON

Consistent with the May 20, 2015 pre-hearing conference and ensuing May 26th Order Setting Hearing and Pre-Hearing Schedule, the Applicant timely submitted a dispositive motion on June 3, 2015. The motion sought to dismiss the appeals of Rosemarie Ives and Curtis Nelson in the above-captioned matter of the February 17, 2015 DNS and both Technical Committee Approvals related to the project known as 162TEN.

Consistent with the May 26, 2015 Order, on or before June 12, 2015, Rosemarie Ives, Curtis Nelson, the Nokomis Club, and the City submitted responses to the motion, and the Applicant timely replied on June 17, 2015.

Applicable Regulations and Law

In order to challenge State Environmental Policy Act (SEPA) environmental threshold determinations, an interested person must "set forth facts demonstrating that the person is adversely affected by the decision". *Redmond Zoning Code (RZC) 21.70.190.B.1.* Washington courts have interpreted similar local ordinance standing provisions to require a demonstration of two factors: 1) that the interests asserted fall within the zone of interests protected by SEPA, and 2) that the approval would result in injury in fact. *Snohomish County Property Rights Alliance v. Snohomish County, 76 Wn. App. 44, 52-53 (1994).*

In order to challenge a Technical Committee decision, a party of record must submit an appeal including facts demonstrating that the person is adversely affected by the decision. Land use decisions are reviewed pursuant to the Land Use Petition Act (LUPA), codified at Revised Code of Washington (RCW) 36.70C. In order to have standing to bring a LUPA claim, the statute

requires a demonstration that the land use decision has prejudiced or is likely to prejudice that person and that the interests asserted are among those that the local jurisdiction was required to consider when it made the land use decision. *RCW 36.70C.060*. Courts have interpreted this standing test to require, among other things, demonstration of injury in fact. *Chelan County v. Nyreim, 146 Wn.2d 904, 933-937 (2002).*

Injury in fact, according to Washington courts, means that the person will be specifically and perceptibly harmed by the proposed action. When a person alleges threatened injury, as opposed to existing injury, he or she must show immediate, concrete, and specific injury to him or herself; if the injury is merely conjectural or hypothetical, there can be no standing. *Trepanier v. Everett, 64 Wash.App. 380, 382-383 (1992); Concerned Olympia Residents for Env't v. Olympia, 33 Wash.App. 677 (1983).*

Having reviewed the motion, the responses, the reply, and all facts and law argued, the following is the Order of the Redmond Hearing Examiner on the motion.

Order

1. The injuries alleged by Rosemarie Ives include (as a representative sample, not an exhaustive list) that Redmond's "ancestors and their stories are present in the building and help to guide [Redmond] forward" , that she "and others will be deprived of the presence of the Nokomis building at its original site if the project is allowed to go forward", that it would be a "loss of a tangible, physical reminder of what Redmond was in the 1930s and beyond", and that she is "personally harmed when the City disregards its adopted policies on historic preservation". *Ives Response, June 12, 2015*. The nature of the injuries alleged is not within the SEPA zone of interests, and furthermore is too generalized in nature to show immediate, concrete, and specific injury to Ives personally. The same injuries could be alleged by any number of persons. Absent injury in fact, Ives' appeal of the DNS must be dismissed.

2. Regarding standing to appeal the Technical Committee Decisions, a party must show she is adversely affected by the decision. Ms. Ives' individual feelings of moral obligation to preserve the building and her personal opinion as to the value of the building asserted in her response to the motion to dismiss arguably do not rise to the level of immediate, concrete, and specific injury sufficient to satisfy the RZC's requirement for being adversely affected. The Ives' appeal of the Technical Committee Decisions must be dismissed.

3. Dismissal of her personal appeal of the Technical Committee decisions does not deprive Ms. Ives of the ability to participate nor exclude her issues on appeal. Of note, all Appellants except Mr. Nelson submitted an identical statement of issues on appeal regarding the Technical Committee decisions. *See Brewe, Ives, and Nokomis Club's appeals of the Technical Committee decision for attachment entitled "Appeal Issues Regarding Design Review Board Approval and Technical Committee Decision"*. As a member in good standing in the Nokomis Club and their sometime spokesperson (*Nokomis Club Response, June 12, 2015*), Ives' asserted interests affected by the Technical Committee Decisions are adequately represented in the Nokomis Club appeal.

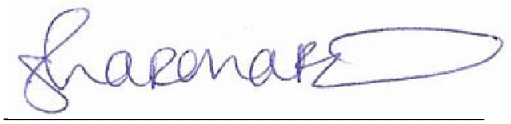
4. The May 5, 2015 appeal of Curtis Nelson is dismissed as untimely. As acknowledged in his response to the motion, he did not appeal at first because he was not initially opposed. When he did appeal, he listed the issuance date of the contested decision as February 17, 2015, in contest of which the May 5th appeal was not timely submitted. If he alternatively intended to appeal the April 22, 2015 Technical Committee decision, a May 5th appeal would have been timely; however, Mr. Nelson did not submit comments prior to issuance of the April 22, 2015 Technical Committee decision and was not a party of record with standing to appeal it. *RZC 20.76.060.I.2.a*.

5. Both Rosemarie Ives and Curtis Nelson may be called as witnesses by the remaining parties to the appeal, at the discretion of the other parties.

6. Clarifying questions about this order and any other procedural questions may be directed to the Examiner via email at

   Attention Ms. Cheryl Xanthos, Deputy City Clerk
   cdxanthos@redmond.gov

Ordered June 22, 2015.

By: 

Sharon A. Rice
Redmond Hearing Examiner