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6 BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

7 In the Matter of the Appeals of
8 **The Nokomis Club and Redmond Historical**
9 **Society,**
10 of the February 17, 2015, Determination of
Non-Significance (SEPA-2015-00017), and
11 **The Nokomis Club**
12 Of the April 22, 2015, Revised Technical
13 Committee Approval of a Site Plan
Entitlement (LAND-2014-01610/SPE)
14

APPL. NO. LAND-2015-00408

APPL. NO. LAND-2014-00746

CITY OF REDMOND TECHNICAL
COMMITTEE'S RESPONSE TO NOKOMIS
CLUB OF REDMOND'S REQUEST FOR
RECONSIDERATION

15
16 **I. INTRODUCTION**

17 On August 7, 2015, the Redmond Hearing Examiner issued her Findings, Conclusions,
18 and Decision in this matter. On August 21, 2015, the Appellant Nokomis Club of Redmond
19 ("the Nokomis Club") filed a request for Reconsideration. The City of Redmond's Technical
20 Committee now files its response.

21 **II. RESPONSIVE ARGUMENT**

22 **A. THE E-MAILS FROM J. TODD SCOTT AND WENDY VANCE ARE**
23 **INADMISSIBLE IN THESE RECONSIDERATION PROCEEDINGS.**

24 Section X(C)(3)(b) of the Hearing Examiner's Rules of Procedure provides that "new
25 evidence may be offered on reconsideration only if the evidence was unavailable at the hearing
26 and the person offering the evidence could not have discovered the evidence with reasonable

1 diligence.” The Nokomis Club has made no showing that the e-mails from J. Todd Scott and
2 Wendy Vance meet these requirements. The Nokomis Club could clearly have obtained the
3 testimony of Mr. Scott and Ms. Vance at the hearing and could have asked those individuals to
4 testify as to the matters that are the subject of the e-mails. The Nokomis Club chose not do so.
5 The e-mails are therefore inadmissible and the City of Redmond’s Technical Committee
6 respectfully requests that they be excluded from consideration in this reconsideration request.

7 **B. KIMBERLY DIETZ DID NOT GIVE FALSE TESTIMONY IN THIS MATTER.**

8 In support of its Request for Reconsideration, the Nokomis Club first accuses Kimberly
9 Dietz of falsely testifying in this matter. According to the Nokomis Club, Ms. Dietz “said that
10 she repeated what the experts told her” about the historic significance of the Nokomis Building
11 and named the expert as “Todd Scott.” In fact, Ms. Dietz said nothing of the sort and the
12 Nokomis Club’s allegation is a complete mischaracterization of her testimony.

13 Ms. Dietz testified on the City’s behalf on July 9, 2015. During direct examination by
14 the City Attorney, Ms. Dietz testified that she did three things in order to evaluate whether
15 demolition of the Nokomis Building would have a probable significant adverse impact on the
16 City’s historic and cultural resources: (1) she checked the city, county, state, and federal historic
17 registers in order to determine whether the Nokomis Building had been designated as a historic
18 landmark (she was already aware it had been deemed “potentially eligible” in previous
19 inventories); (2) she visited the site on two occasions, once with Robert Pantley, in order to
20 determine the architectural integrity of the building; and (3) she considered whether there were
21 other structures in the City that could continue to tell the story of the Nokomis Club and the
22 WPA’s involvement in Redmond if the Nokomis Building was demolished. *Dietz Testimony.*
23 She walked the Hearing Examiner through her analysis and her conclusions and at no time
24 during the direct examination did she testify that she was “repeat[ing] what the experts said” in
25 terms of the historic or architectural significance of the Nokomis Building. In fact, she
26 acknowledged that she and Mr. Griffith disagreed both on the historic significance of the

1 Nokomis Building and on some possible mitigation measures for the demolition that she
2 suggested. *Dietz Testimony*. And on direct examination, she made no mention of Mr. Scott,
3 stating only that she had “conversations with county staff” during the formulation of the
4 conditions of approval for the 162Ten project.

5 On cross-examination by Ms. Munoz, Ms. Dietz did mention Mr. Scott on three separate
6 occasions. First, as Ms. Munoz was questioning Ms. Dietz’s professional qualifications
7 regarding historic preservation issues, the following exchange took place:

8 Ms. Munoz: So you have had no history either?

9 Ms. Dietz: The City works through an interlocal agreement with King County
10 Preservation. I administer the City’s code and comprehensive plan
11 and then when I need expert advice, such as archaeologic or
12 historic, architectural, I refer to the King County staff for that
under our interlocal agreement.

13 Ms. Munoz: Did you get some of your information from that staff?

14 Ms. Dietz: As I mentioned earlier, I did.

15 Ms. Munoz: Or you assessed it yourself?

16 Ms. Dietz: I only did preliminary and reported what I found and asked
17 questions of the King County staff.

18 Ms. Munoz: Did they come out and go through it with - go over the site with
you to assess and give you these recommendations?

19 Ms. Dietz: We visited the site together during the 2014 site visit.

20 Ms. Munoz: And who was that?

21 Ms. Dietz: That was with Todd Scott.

22 Ms. Munoz: And why does not Mr. Griffith have a record of that?

23 Ms. Dietz: I do not know why Mr. Griffith would have a record of that type of
24 activity.

1 A few moments later, Ms. Munoz asked about Mr. Scott's qualifications in the context of
2 comparing the County's historic inventory sheets for the Nokomis Building prepared by Mr.
3 Scott and Ms. Dietz's conclusions about the building's architectural integrity:

4 Ms. Munoz: Okay. And so Mr. Scott is qualified by the Secretary of the
5 Interior's standards to evaluate properties like this?

6 Ms. Dietz: That is the basis for our work, yes, both of us, and he is a
7 preservation architect.

8 Ms. Munoz: Now you said both of us, but your qualifications aren't anywhere
9 near what the Secretary's professional standards require.

10 Ms. Dietz: When I say that I use them I mean that I administer them. I read
11 them and administer them and then I do that in consultation with
12 Mr. Scott.

13 Ms. Munoz: Well that's quite different than making the initial assessment
14 because when you administer you just write things down, isn't that
15 right, and put them in sequence?

16 Ms. Dietz: It depends on your definition of administering code.

17 Ms. Munoz: What is your definition?

18 Ms. Dietz: I follow the code and I do what it tells me to do.

19 Ms. Munoz: Do you interpret them too?

20 Ms. Dietz: I would not interpret code on my own. I would consult with
21 others.

22 Ms. Munoz: And you say you did that?

23 Ms. Dietz: I consulted with Mr. Scott and I also had conversation with Mr.
24 Griffith.

25 And finally, Ms. Dietz answered one last question about Mr. Scott on re-cross:

26 Ms. Munoz: Sorry, I have another question. When did you tour the site with
Todd Scott?

Ms. Dietz: That was in 2014. I do not have the exact date with me.

1 As is clear from these exchanges, the Nokomis Club's accusation that Ms. Dietz falsely
2 testified is completely without merit. Ms. Dietz never said that she "repeated what the experts
3 said" and never testified in detail as to the substance of her conversations with Mr. Scott because
4 Ms. Munoz never asked her about those conversations. She also never testified that Mr. Scott
5 agreed with her conclusions about whether there would be a probable significant adverse impact
6 on the City's historic and cultural resources from the demolition of the Nokomis Building and
7 she certainly never said that all she was doing was repeating Mr. Scott's conclusions regarding
8 architectural integrity. The Nokomis Club's allegations to the contrary are simply untrue.

9 Moreover, the July 9, 2015 e-mail from Mr. Scott to Mayor Ives and Joe Townsend does
10 not contradict Ms. Dietz's testimony. Mr. Scott agrees that he, Ms. Dietz, and Tom Hitzroth
11 toured downtown Redmond to look at a number of buildings, although he says the tour occurred
12 on September 12, 2013 as opposed to Ms. Dietz's general recollection that it was sometime in
13 2014. Mr. Scott agrees that Ms. Dietz asked him a number of questions during the tour "about
14 things such as design improvements, whether certain architectural features might be original to
15 some buildings and whether some buildings might be eligible for landmark designation." He
16 does not deny that they visited the Nokomis Building, but simply says that "I do not recall
17 looking at [it]." Finally, he says that if "as Kim asserts," he told Ms. Dietz that the Nokomis
18 Building had lost its architectural integrity to the extent that it was not eligible for landmark
19 designation that opinion "would have been based solely on its architectural significance." But
20 because Ms. Dietz never asserted during her testimony that Mr. Scott told her the building had
21 lost architectural integrity or that he agreed with her conclusions to that effect, this statement
22 proceeds from a false premise completely concocted by the Nokomis Club. Mr. Scott's e-mail is
23 not contrary to Ms. Dietz's testimony because she never made the assertions he contradicts. The
24 Nokomis Club's reliance on Mr. Scott's e-mail is misplaced.

25 The City of Redmond's Technical Committee stands by the testimony given by Ms. Dietz
26 in this matter. Ms. Dietz is a planning professional who is experienced in administering the

1 City's historic preservation code and its comprehensive plan and she backed up her testimony
2 concerning the Nokomis Building with photographs and other documentation. She gave her
3 analysis and her conclusions regarding the architectural integrity of the Nokomis Building and
4 whether its demolition would have a probable significant adverse impact on the City's cultural
5 and historic resources. The Nokomis Club presented no sworn testimony from any expert on the
6 architectural integrity of the Nokomis Building and the Nokomis Club's complete
7 mischaracterization of Ms. Dietz's testimony does nothing to contradict her conclusions. The
8 Nokomis Club's Request for Reconsideration on this basis should be denied.

9 **C. DAVID MARKLEY DID NOT FALSELY TESTIFY IN THIS MATTER.**

10 The Nokomis Club next asserts that the applicant's traffic expert, David Markley, falsely
11 testified that "Village Square management had no issues with Vision 5." The Nokomis Club
12 presents no transcript of Mr. Markley's testimony to prove this assertion and the assertion is not
13 true. On both direct examination and cross-examination, Mr. Markley testified that in his
14 opinion, the majority of what the Nokomis Club was characterizing as "spillover parking" from
15 Vision 5 was likely attributable to other sources. *Markley Testimony*. On cross-examination,
16 Mr. Markley also testified that signs saying "Redmond Professional Building - No Vision 5
17 Parking" were indicative of a likely spillover problem at that location in the past, but not
18 necessarily indicative of a continuing problem today. *Id.* He was never asked, however, whether
19 Village Square management had any current issues with Vision 5 and he certainly did not testify
20 that there were no such issues. And even if he had so testified, the e-mail that the Nokomis Club
21 has attached to its Request for Reconsideration as Attachment B-2 was not addressed to Mr.
22 Markley and there is no showing that he was aware of it at the time he testified. The Nokomis
23 Club's assertion that Mr. Markley testified falsely is simply not supported by his testimony or the
24 e-mail they have produced. The Request for Reconsideration on this basis must be denied.

25 **D. THE NOKOMIS CLUB DID NOT LIST KIMBERLY KEELING ON ITS**
26 **WITNESS LIST AND THE CITY HAD NO OBLIGATION TO PROVIDE HER**
AS A WITNESS AT THE HEARING.

1 The Nokomis Club's next basis for reconsideration is to blame the City for not having
2 Kimberly Keeling available at the hearing for the Club to examine. The Nokomis Club has
3 failed to show that the City had an obligation to have Ms. Keeling present and the Nokomis
4 Club's Request for Reconsideration on that basis must be denied.

5 Paragraph 12 of the Order Setting Hearing and Pre-Hearing Schedule issued by the
6 Hearing Examiner herein required all parties to submit lists of the witnesses they intended to call
7 no later than June 25, 2015. Paragraph 14 of the Order went on to provide that if the witnesses
8 or exhibits disclosed on June 25 caused any party to want to offer additional witnesses or
9 exhibits, an addendum witness and/or exhibit list was to be filed by that party at the earliest
10 opportunity. Pursuant to the Order, the City filed its witness list on June 25 and listed Ms.
11 Keeling as witness that the City "may call." The Nokomis Club also filed its witness list on June
12 25, but did not list Ms. Keeling. And while the Nokomis Club was on notice of Ms. Keeling's
13 involvement in transportation and parking issues related to the 162Ten Project by virtue of the
14 City's witness list, the Nokomis Club did not file an addendum witness list naming Ms. Keeling,
15 nor did they communicate to their desire to call Ms. Keeling as a witness to the City or the
16 Hearing Examiner at any time prior to the hearing. Had the Nokomis Club listed Ms. Keeling as
17 a witness or had they specifically requested that the City make her available, the City would have
18 done so and would have agreed to reschedule the hearing until a time when Ms. Keeling could be
19 present. But since the Nokomis Club failed to list Ms. Keeling as a witness or request her
20 presence in any way, the City was free to call (or not call) any witness it listed and the Nokomis
21 Club has no right to complain.

22 Finally, although the Nokomis Club now says that the Club would not have agreed to the
23 July 10 hearing date if it had known that Ms. Keeling would not be present, it must be noted that
24 the July 10 hearing date was chosen before any witness lists were filed and that the Nokomis
25 Club was therefore not relying on Ms. Keeling's availability when the Club agreed to the date. It
26 must also be noted that the Nokomis Club made no request for a continuance when it was

1 informed that Ms. Keeling was not available. And it must be reiterated that the Nokomis Club
2 could have listed Ms. Keeling as a witness on their original or an addendum witness list and have
3 thereby compelled her presence. The Nokomis Club is not entitled to reconsideration for its own
4 failures in presenting its case. The Request for Reconsideration on this basis must be denied.

5 **E. THE CITY HAS NO OBJECTION TO CORRECTION OF THE DATES ON**
6 **WHICH THE CHAMBER OF COMMERCE ALLOWED THE NOKOMIS CLUB**
7 **TO USE THE BUILDING.**

8 The Nokomis Club has requested that the Hearing Examiner's decision be corrected to
9 state that the Chamber of Commerce allowed the Nokomis Club to meet in the building until
10 1995, rather than 1999 as the decision now states. The City of Redmond's Technical Committee
11 has no objection to this correction as long as 1995 is the date reflected in the actual testimony
12 given before the Hearing Examiner.

13 **F. THE CITY HAS NO OBJECTION TO CLARIFYING THE CONTEXTUAL**
14 **MEANING OF THE WORD "SINGULAR" ON PAGE 31 OF THE HEARING**
15 **EXAMINER'S DECISION, BUT BELIEVES THE MEANING IS ALREADY**
16 **CLEAR.**

17 In Section E of its Request for Reconsideration, the Nokomis Club objects to the use of
18 the word "singular" in the following sentence on page 31 of the Hearing Examiner's decision:

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

24 (Emphasis added). The Nokomis Club argues that the use of the word singular "asserts the
25 Nokomis Club engaged in only minimal individual activity" and requests that it be clarified. The
26 City of Redmond's Technical Committee does not read the word "singular" in the same way the
Nokomis Club does. According to Merriam-Webster's online dictionary, <http://www.merriam-webster.com>, one of the meanings of the word "singular" is "distinguished by superiority:
EXCEPTIONAL <an artist of *singular* achievements>." In the context in which the Hearing

1 Examiner has used the word, "singular" as in the Nokomis Club's "singular contribution... to the
2 City of Redmond" is clearly intended to recognize the exceptional contribution of women of the
3 Club rather than to state that the Club engaged in only minimal individual activity. The City has
4 no objection to clarifying the language if that is indeed what the Hearing Examiner meant, but
5 believes clarification is unnecessary.

6 **III. CONCLUSION**

7 For all of the reasons set forth above, the Request for Reconsideration filed by the
8 Nokomis Club should be denied. No false testimony was given by either Ms. Dietz or Mr.
9 Markley. The Nokomis Club failed to list Ms. Keeling as a witness on its witness list and made
10 no effort to request Ms. Keeling's presence prior to the hearing. There is no reason for the
11 Hearing Examiner to reconsider her decision.

12 RESPECTFULLY SUBMITTED this 31st day of August, 2015.

13 OGDEN MURPHY WALLACE, P.L.L.C.

14
15 By 

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17 Attorneys for City of Redmond Technical
18 Committee
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