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

5 In the Matter of the Appeals of:

6
7 **Nokomis Club of Redmond; Redmond
8 Historical Society,**
9 **Appellants,**

10 Of the February 17, 2015, Determination of
11 Non-Significance (SEPA-2015-00017) and
12 the April 22, 2015 Technical Committee
approval of a Site Plan Entitlement (LAND-
2014-01610/SPE)

SEPA-2015-00017
LAND-2014-01610/SPE

162Ten Appeal

APPLICANT NATURAL AND BUILT
ENVIRONMENTS' RESPONSE IN
OPPOSITION TO REQUEST FOR
RECONSIDERATION

13
14 **I. INTRODUCTION**

15 Applicant Natural Built Environments (hereinafter the "Applicant") submits this
16 response to Nokomis Club of Redmond's (hereinafter "Nokomis Club") Request for
17 Reconsideration. Applicant understands the City of Redmond will submit its response
18 separately; Applicant hereby joins in the City's response as well as submitting the following
19 comments.

20 Nokomis Club asks the Hearing Examiner to accept new evidence into the record
21 without providing any good reason why it had not timely submitted such evidence. The
22 Examiner should refuse to allow this belated attempt to enter and to rely on this evidence.
23 Additionally, Nokomis Club's alleged errors of facts and procedure, are not probative and do
24 not concern the central issues of this matter. Thus, even if the Examiner accepts Nokomis
25 Club's untimely submitted evidence, its arguments based thereon fail to support its contention

1 that the Examiner's Decision was erroneous. The Examiner should therefor deny Nokomis
2 Club's request for reconsideration.

3 II. LEGAL ARGUMENT

4 A. The Examiner Should Reject Nokomis Club's Newly Proffered Evidence as 5 Untimely.

6 In its request for reconsideration, Nokomis Club alleged five errors of facts and/or
7 procedure as basis for its request that the Examiner remove, correct, or clarify these errors and
8 deny the 162TEN project. For the first two alleged errors of facts, Paragraphs A and B,
9 Nokomis Club seeks to introduce new evidence that supposedly disputes the evidence on
10 record. The first is an email, dated July 9, 2015, from Todd Scott, the Preservation Architect
11 for the King County Historic Preservation Program, recalling his interactions with Kimberly
12 Dietz and generally Nokomis Club building occurring in 2013 and 2014; the second is another
13 email, dated March 2, 2015 from Wendy Vance, regarding loitering and littering on the Village
14 Square parking lot. The latter three allegations of errors, Paragraphs C, D, and E, purport
15 unsubstantiated evidentiary statements. The last two appear to seek only to correct scrivener's
16 errors and Nokomis Club does not at all describe how these alleged scrivener's errors affect the
17 Examiner's Decision or how their corrections, if warranted, would lead to the relief it requests.
18 Since even Nokomis Club seems to be at a loss on how the very minor clerical errors alleged in
19 Paragraphs D and E could have altered the Examiner's findings and conclusions, we focus our
20 response on Nokomis Club's first, second, and third assignment of errors—Paragraphs A, B,
21 and C, respectively.

22 As clearly stated in the Hearing Examiner Rules of Procedure, for a Type II matter,
23 "new evidence may be offered on reconsideration only if the evidence was unavailable at the
24 hearing and the person offering the evidence could not have discovered the evidence with
25 reasonable diligence." City of Redmond, Hearing Examiner Rules of Procedure, § X.C.3.b.
Here, Nokomis Club wishes to submit Todd Scott's email and Wendy Vance's email, both of

1 which it had in hand prior to or during the hearing. Also, Nokomis Club now assigns error of
2 procedure, through unsubstantiated testimonial statements, as to Kim Keeling's unavailability
3 to testify even though it conceded to Terry Marpert's substitution.

4 Nokomis Club provides no explanation for why it failed to submit the evidence when
5 the record was open, to take efforts to discover the information in a timely fashion. Nokomis
6 Club had months, during the City's project review and Hearing Examiner review, to consider
7 and submit responsive information. There is no excuse for this attempt to belatedly rely on
8 evidence that has been in existence and readily available. Thus, these emails and statements are
9 not "new evidence" for purposes of reconsideration and the Examiner must deny Nokomis
10 Club's attempt to belatedly introduce evidence as contrary to the Hearing Examiner's Rules of
11 Procedure.

12 **B. Nokomis Club's Allegations of Errors Do Not Rise to Overturn the Examiner's**
13 **Decision.**

14 Even if the Examiner accepts Nokomis Club's untimely submitted evidence, its
15 assignments of errors based thereon are not probative to its claim to reverse the Examiner's
16 Decision.

17 For its first assignment of error, Nokomis Club accuses Ms. Dietz of perjury and calls
18 into question her qualifications to testify. *See*, Request for Reconsideration, § A. In support of
19 these serious accusations, Nokomis Club asks the Examiner to consider Mr. Scott's email.
20 However, Mr. Scott's email does not at all refute Ms. Dietz's testimony or credibility. Instead,
21 Mr. Scott's email states that he was asked to recollect events and conversations that occurred in
22 at least one or two years prior, including a walking tour of downtown Redmond with Ms. Dietz,
23 though he did "not recall looking at the Nokomis Building." *See, Id.*, Attachment A-2. In fact,
24 Mr. Scott did not deny telling Ms. Dietz that the Nokomis Building had insufficient historic
25 integrity for landmark designation. *See, Id.* Certainly, Mr. Scott's tepid recollections contained

1 in the submitted email do not justify Nokomis Club's accusation that Ms. Dietz lied under oath
2 or contravene Ms. Dietz' testimony in the record.

3 Nokomis Club's desire to have the Nokomis Building designated and preserved as a
4 historically significant building cannot be accomplished by levelling perjury charges at
5 witnesses who do not testify according to its position. There were multiple witnesses and many
6 documents that entail the evidence in the record that the Examiner considered as to this issue
7 alone. In the Decision, the Examiner clearly and in detail wrote out relevant facts in over a
8 dozen pages of findings on this single topic. With such wealth of evidence, the Examiner did
9 not find Ms. Dietz's testimony contradictory.

10 For its second assignment of error, Nokomis Club presented a single email that claimed
11 of continuing issues with another project's (Vision5) residents using, loitering, drinking, and
12 littering on the parking lot that is owned by Village Square to again accuse a witness, David
13 Markley, of false testimony. *See, Id.*, § B. In the Examiner's findings, Mr. Markley, as the
14 project's parking and transportation expert, is noted as speaking about the project's traffic and
15 parking in Findings no. 45 – 47. *See, Decision*, Pgs. 27-28. Nokomis Club now deliberately
16 takes Mr. Markley's testimony regarding parking and transportation out of context and
17 improperly expands that testimony into arenas that were never within the scope of Mr.
18 Markley's testimony. Nokomis Club's attempt to impune Mr. Markley, his expertise and his
19 longstanding authority in the transportation planning and engineering field should be
20 summarily rejected.

21 Nokomis Club had the opportunity to cross examine Mr. Markley and to rebut his
22 testimony with the testimony of other witnesses, including that of Ms. Vance. Instead,
23 Nokomis Club elected to wait until after the hearing was closed to communicate with Ms.
24 Vance, and to use that isolated email to inappropriately accuse Mr. Markley of lying under
25 oath. It is convenient for Nokomis Club that parties cannot cross examine the author,

1 particularly as such cross-examination would lead to a complete understanding of Ms. Vance's
2 email and further investigations performed thereafter. The Examiner must now reject this
3 newly offered evidence because it is selective and isolated, resulting in an incomplete
4 accounting of the facts and circumstances. Certainly, such piecemeal documentation does not
5 rise to the standard necessary to show the Examiner's Decision was erroneous.

6 For its third assignment of error, Nokomis Club complains of Kim Keeling's
7 unavailability to testify. This complaint is not probative to the Examiner's Decision. Nokomis
8 Club accepted Terry Marpert, the City Planner, to testify as a substitute. Moreover, as clearly
9 demonstrated in the Examiner's findings, Mr. Marpert had ably and extensively testified in
10 place of Ms. Keeling, offering testimony about the City's approval processes for the project,
11 including its transportation management program, standards and deviations. In fact, Nokomis
12 Club does not refute the accuracy or credibility of Mr. Marpert's testimony, and thus, this
13 alleged error is simply a meritless distraction.

14 As discussed earlier, Nokomis Club's fourth and fifth assignment of error seem to be
15 scrivener's errors that it chose or cannot explain further. These alleged errors are very minor
16 and harmless, and do not affect the Examiner's Decision.

17 III. CONCLUSION

18 Based on the arguments above and the evidence in the administrative record, the
19 Applicant hereby respectfully requests the Hearing Examiner deny the Nokomis Club's request
20 for reconsideration.

21 DATED this 31st day of August, 2015.

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1625-16 Applicant's Response to Reconsideration 8-28-15