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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeals of
Keith Brewe, Rosemarie Ives, the Nokomis Club, Redmond Historical Society, 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)

NO. SEPA-2015-00017
LAND-2014-01610/SPE

CITY OF REDMOND'S PRE-HEARING
LEGAL BRIEFING

I. INTRODUCTION - SCOPE OF BRIEFING

This matter comes before the Hearing Examiner for a decision on two items related to the proposed 162Ten development project (the "Project"): (1) the City's SEPA Determination of Non-Significance (DNS); and (2) approval of the site plan entitlement application. Robert Odle, Director of the Department of Planning and Community Development, and Linda De Boldt, Director of the Department of Public Works, submitted their staff report to the Hearing Examiner in anticipation of this appeal. Their staff report is incorporated by reference here.

II. ISSUES

1) Whether the Appellants met their burden of proof in establishing that the City's SEPA Determination of Non-Significance is clearly erroneous and the proposed project would have a significant environmental impact to historical or cultural resources?

1 **A. THE DNS WAS CORRECTLY ISSUED BY THE CITY’S SEPA RESPONSIBLE**
2 **OFFICIAL AND MUST BE UPHELD.**

3 The City’s Determination of Non-Significance was appealed by Keith Brewé, Rosemarie
4 Ives, and the Nokomis Club/Redmond Historical Society. As a result of a Motion to Dismiss
5 filed by the applicant, Ms. Ives’ SEPA DNS appeal was dismissed. Subsequently, Mr. Brewé
6 withdrew his appeal. Consequently, only the Nokomis Club/Redmond Historical Society’s
7 SEPA DNS appeal is discussed below.

8
9 **1. The Burden of Proof is on Appellants to Show that Issuance of the DNS was**
10 **Clearly Erroneous.**

11 Before proceeding to the substance of the issues set forth above regarding SEPA, it is
12 important to note the burden of proof in the DNS appeal. A DNS is a determination by the
13 SEPA responsible official that a proposal will not have any probable significant adverse
14 environmental impact. WAC 197-11-340. In the City of Redmond, the SEPA Responsible
15 Official is the City’s Technical Committee as defined by RMC Title 4.35. RMC 21.70.070. The
16 Responsible Official’s decision to issue a DNS and to not require an Environmental Impact
17 Statement (EIS) is to be accorded “substantial weight” in any administrative appeal. RCW
18 43.21C.075(3)(d); WAC 197-11-680(3)(a)(viii); RMC 21.70.190(F)(1). The substantial weight
19 requirement directs an appellate body to review the responsible official’s decision under the
20 “clearly erroneous” standard. *Cornelius v. Washington Dep’t of Ecology*, 182 Wn.2d 574, 599,
21 344 P.3d 199 (2015); *Norway Hill Pres. & Prot. Ass’n. v. King County Council*, 87 Wn.2d 267,
22 275–76, 552 P.2d 674 (1976).

23 A decision is “clearly erroneous” only when, although there is evidence to support it, the
24 reviewing body is “left with the definite and firm conviction that a mistake has been committed.”
25 *Id.* (citing *Norway Hill Preservation & Protection Ass’.*, 87 Wn.2d at 274). Thus, in this SEPA
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1 appeal proceeding, Appellants bear the burden of showing that the SEPA Responsible Official's
2 decision to issue the DNS was clearly erroneous and that there will be significant adverse
3 environmental impacts from the 162Ten proposal. For the reasons set forth hereinafter, it is
4 anticipated that Appellants will fail to meet their burden and the DNS must therefore be upheld.

5 **2. In Determining Whether the 162Ten Project Will Have Significant Adverse**
6 **Environmental Impacts, the Hearing Examiner is Limited to Considering**
7 **those Elements of the Environment Set Forth in WAC 197-11-444.**

8 RCW 43.21C.110(1)(f) provides that “[a]nalysis of environmental considerations... may
9 be required only for those subjects listed as elements of the environment (or portions thereof)” in
10 the SEPA rules adopted by the Washington State Department of Ecology. In accord with this
11 requirement, WAC 197-11-740 defines the “environment” to be considered under SEPA as being
12 “limited to those elements listed in WAC 197-11-444.” Thus, in order to prevail on this appeal,
13 Appellants must not only demonstrate that the 162Ten Project is likely to have a significant
14 adverse impact, but also that the impact is to an element of the environment recognized under
15 SEPA. The pending appeals do not establish any significant environmental impacts.

16 **3. Appellants Will Be Unable To Prove That The 162Ten Project Will Have A**
17 **Significant Adverse Environmental Impact On Historical and Cultural**
18 **Preservation.**

19 Appellants only appeal one issue with regard to the City's SEPA Determination of Non-
20 Significance. The only alleged error that the Nokomis Club/Redmond Historical Society's
21 SEPA appeal outlines relates to the historical and cultural impacts to the existing structure. *See*
22 *City's Exhibit B.* As such, only those historical and cultural impacts are relevant to this SEPA
23 appeal.

24 Historical and cultural preservation is an element of the built environment that must be
25 analyzed during SEPA review. WAC 197-11-444(2)(b)(vi). In compliance with WAC 197-11-
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1 960, the applicant submitted a SEPA checklist. The applicant's response as well as the City's
2 evaluation of historical resources is included below:

3
4 a. Are there any buildings, structures, or sites, located on or near
5 the site that are over 45 years old listed in or eligible for listing in
6 national, state, or local preservation registers located on or near the
7 site? If so, specifically describe.

8 [Applicant response] - None

9 [City Evaluation] - Citywide historic inventories were conducted in
10 1998 and 2005. The site known as Redmond "Third Library Site"
11 and "Nokomis Club" was included in the inventory and as with all
12 properties inventoried; a Determination of Eligibility was
13 established.

14 b. Are there any landmarks, features, or other evidence of Indian or
15 historic use or occupation. This may include human burials or old
16 cemeteries. Are there any material evidence, artifacts, or areas of
17 cultural importance on or near the site? Please list any professional
18 studies conducted at the site to identify such resources.

19 [Applicant response] - None

20 [City Evaluation] - A 2014 site visit determined that the loss of
21 architectural integrity that had occurred through previous remodels
22 and repairs rendered the structure ineligible for listing on the local
23 register.

24 c. Describe the methods used to assess the potential impacts to
25 cultural and historic resources on or near the project site. Examples
26 include consultation with tribes and the department of archeology
and historic preservation, archaeological surveys, historic maps,
GIS data, etc.

[Applicant response] - Not applicable

[City Evaluation] - The City will follow its policy to establish a
high resolution photographic record prior to demolition of the
subject structure.

See Exhibit J (SEPA DNS) to the Staff Report.

1 Redmond Zoning Code (RZC), 21.30 Historic and Archaeological Resources provides
2 the regulatory process for the nomination of properties to the Redmond Heritage Resource
3 Register and for nomination as a historic landmark in accordance with King County Code
4 Chapter 20.62. RZC 21.30.040.C allows for nomination of a structure, object, or site by the City
5 of Redmond, any person, group, owner, or member of the Landmark Commission. Except for
6 properties listed in the Redmond Heritage Resource Register, the owner must sign the
7 application for nomination. The Register was adopted by the City Council in 2000 to indicate
8 key historic landmarks for preservation, opportunity for incentive programs, and regulation
9 regarding their maintenance. Thereafter, the application shall be filed with the Administrator and
10 without the property owner's signature, the application cannot be processed. As the owners of the
11 property did not consent to the nomination of the property to the Redmond Heritage Resource
12 Register, the property was not included in the register.
13
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15 Further, the designation criteria for nomination under King County Code Chapter 20.62
16 are evaluated at the time of the application for redevelopment and call for the property to include
17 the following:

- 18 1. Age of more than 40 years; and
- 19 2. Integrity of location, design, setting, materials, workmanship, feeling and association;
20 and
- 21 3. Association with events that have made a significant contribution to broad patterns of
22 national, state, or local history; or
- 23 4. Is associated with the lives of persons significant in national, state, or local history; or
- 24 5. Embodies distinctive characteristics of a type, period, style, or method of design or
25 construction, or represents a significant and distinguishable entity whose components
26 make lack individual distinction; or
6. Yielded or likely to yield information important in prehistory or history; or
7. Outstanding work of a designer or builder who made significant contributions to the
art.

1 Staff evaluated the property in 2014 and determined that since its original construction
2 the subject structure (Nokomis Clubhouse/3rd Library Site/Chamber of Commerce) has
3 experienced several recognizable alterations including:

- 4 • Replacement and/or enclosure of front porch
- 5 • Purlins covered – these are the beams of the roof’s structure that run horizontal to
6 the peak, perpendicular to the rafters, and in the original design of this structure were
7 exposed
- 8 • Breezeway extended to rear and enclosed
- 9 • Additional and larger structure located and connected to in the rear of primary
10 structure
- 11 • Original chimney decommissioned, partially removed
- 12 • Exterior chimney added (in location different from original chimney)
- 13 • Non-historic entries

14 As a result of the evaluation, staff recognized that the property meets or could be
15 considered through the criteria listed above. However, in comparison to the architecture and
16 integrity of properties included in the Heritage Resource Register and designated as historic
17 landmarks, the amount of integrity and architectural distinction was less. In comparison, for
18 example, the cabins and accessory structures also constructed by the Works Progress
19 Administration (WPA) and located in Anderson Park, a city-owned public park, demonstrated
20 high integrity and workmanship. These structures were prime examples of WPA activities in
21 Redmond. The Nokomis structure was a form of architecture common to the City during the time
22 period and because of modifications made to the front and rear of the structure, staff concluded
23 its level of integrity did not render it as an exemplary example from the historic period.

24 Staff analyzed whether the subject building can and should be included in the Redmond
25 Heritage Resource Register or should be nominated as a historic landmark in accordance with
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1 King County Code Chapter 20.62. These determinations are afforded substantial deference and
2 Appellants will be unable to show that the decisions were clearly erroneous.

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4 **B. THE TECHNICAL COMMITTEE'S APPROVAL DECISION WAS
CORRECTLY ISSUED AND MUST BE UPHELD.**

5 The Technical Committee's Notice of Decision was appealed by Keith Brewe, Rosemarie
6 Ives, Curtis Nelson, and the Alexa Munoz on behalf of the Nokomis Club. As a result of a
7 Motion to Dismiss filed by the applicant, Ms. Ives' and Mr. Nelson's Technical Committee
8 Decision appeals were dismissed. Subsequently, Mr. Brewe withdrew his appeal. Consequently,
9 only Alexa Munoz's appeal, filed on behalf of the Nokomis Club is discussed below. The
10 Redmond Historical Society did not join the Nokomis Club appeal and did not file an appeal of
11 their own related to the Technical Committee decision.
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14 **1. The Burden of Proof is on Appellant to Show that Technical Committee's
Decision was Clearly Erroneous.**

15 Decisions on Type II applications, such as this project, are made by the Technical
16 Committee. RZC 21.76.060(E). The decision of the Technical Committee shall be based on the
17 criteria for the application set forth in the RZC, and shall include any conditions necessary to
18 ensure consistency with the applicable development regulations. *Id.* When design review is
19 required, as it was here, the decision of the Design Review shall be included with the Technical
20 Committee decision. *Id.*
21

22 Similar to the SEPA DNS determination, the Technical Committee's decision is afforded
23 substantial weight by the Hearing Examiner. RZC 21.76.060(I)(4). The Hearing Examiner may
24 grant the appeal or grant the appeal with modifications if the Examiner determines that the
25 appellant has carried the burden of proving that the Type I or II decision is not supported by a
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1 preponderance of the evidence or was clearly erroneous. *Id.* The substantial weight requirement
2 directs an appellate body to review the responsible official’s decision under the “clearly
3 erroneous” standard. *Cornelius*, 182 Wn.2d at 599); *Norway Hill*, 87 Wn.2d at 275–76.
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5 A decision is “clearly erroneous” only when, although there is evidence to support it, the
6 reviewing body is “left with the definite and firm conviction that a mistake has been committed.”
7 *Id.* (citing *Norway Hill Preservation & Protection Ass’.*, 87 Wn.2d at 274). Thus, in this
8 Technical Committee Decision appeal, Appellants bear the burden of showing that the Technical
9 Committee’s decision was clearly erroneous.
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11 Appellant’s Technical Committee appeal is simply an outline of “appeal issues regarding
12 the design review board approval and technical committee decision.” The City’s Staff Report
13 (City’s Exhibit 1) fully addresses each issue identified by Appellant. The Staff Report is
14 incorporated by reference here.
15

16 It is anticipated that Appellant will fail to meet its burden to establish that the Technical
17 Committee’s decision was clearly erroneous on any of the numerous issues listed in its appeal.

18 Further, Appellant does not have standing to raise the vast majority of its issues on
19 appeal. The Nokomis Club has standing to appeal the Technical Committee Decision solely
20 based upon the alleged historical and cultural impacts. They have such standing because those
21 alleged historical and cultural impacts satisfy the aggrieved or adversely affected person test,
22 which is used to determine standing. That test references the appellant’s asserted interests and
23 the prejudice to the person from the agency action. *See* RCW 34.05.530. The Nokomis Club
24 does not have standing to appeal the remaining issues it raises because those issues are not
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1 related to any of the Club's interests and the Technical Committee's approval decision does not
2 prejudice the Club as to those interests. Accordingly, the Hearing Examiner should limit the
3 Nokomis Club's appeal of the Technical Committee's decision to only those issues related to the
4 Club's interests – the historical and cultural aspects of the current structure.
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6 **IV. CONCLUSION**

7 For all of the reasons set forth in this brief, along with those outlined in detail in the Staff
8 Report, at the end of appellants' presentation the Hearing Examiner should deny the appeal of
9 the City's SEPA Determination of Non-Significance for the 162Ten Project. It is anticipated that
10 Appellants will fail to meet their burden of proving that the 162Ten Project will have a probable
11 significant adverse environmental impact. When all of the evidence is presented and considered,
12 the Hearing Examiner will not be "left with the definite and firm conviction that a mistake has
13 been made" by the responsible official. Then, then DNS must be upheld and the appeal must be
14 dismissed.
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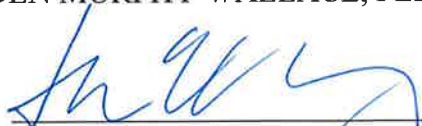
16 Further, for all the reasons set forth in this brief, along with those outlined in detail in the
17 Staff Report, at the end of the appellant's presentation the Hearing Examiner should deny the
18 appeal of the Technical Committee's decision for the 162Ten project. As with the DNS appeal,
19 appellant will fail to meet its burden to prove that the technical committee's approval decision
20 was clearly erroneous. Notwithstanding appellant's anticipated failure to meet its burden, the
21 Nokomis Club does not have standing to raise the vast majority of the issues on appeal for its
22 Technical Committee decision appeal. As such, those issues should be dismissed outright.
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DATED this 7th day of July, 2015.

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By



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