

CITY OF REDMOND HEARING EXAMINER MINUTES

November 16, 2011

Redmond City Council Chambers 15670 NE 85th Street, Redmond 1 p.m.

Hearing Examiner

Sharon Rice, Offices of Sharon Rice, Hearing Examiner, PLLC

Staff

Judd Black, Planning Manager
David Almond, Engineering Manager, PW
Jeff Dendy, Senior Engineer, PW
Thara Johnson, Associate Planner
Kurt Seemann, Senior Engineer, PW
Jim Streit, Senior Engineer, PW
Elizabeth Adkisson, CMC, Deputy City Clerk

Convened: 1 p.m. Adjourned: 2:05 p.m.

I. CALL TO ORDER

Hearing Examiner Sharon Rice convened the hearing at 1 p.m.

II. DESCRIPTION OF HEARING SEQUENCE AND PROCEDURES

Ms. Rice introduced the matter under consideration, reviewed the sequence of the hearing for the afternoon, and explained the proceedings. Ms. Rice noted that she will issue a decision on the Samm-Red Estates Appeal (of a Notice of Decision), within 21 days of the closing of the record. Ms. Rice disclosed that she has previously heard an appeal on this matter.

Ms. Rice administered the swearing in of all those in attendance testifying on these matters, reminded the attendees that the proceedings were being recorded, and asked them to identify themselves for the record. The following staff and applicant representatives were in attendance:

Thara Johnson, Associate Planner, City of Redmond
Judd Black, Planning Manager, City of Redmond
David Almond, Public Works Engineering Manager, City of Redmond
Jeff Dendy, Senior Engineer, Public Works, City of Redmond
Kurt Seemann, Senior Engineer, Public Works, City of Redmond
Jim Streit, Senior Engineer, Public Works, City of Redmond
Jim LaBlanc, Appellant
Dwight Holobagh, Applicant's Representative
Michael Lau, Applicant's Representative

III. APPEAL HEARING

A. SAMM-RED ESTATES APPEAL

L110371 Appeal (L110371) of the Notice of Decision for Samm-Red Estates –

Short Plat (File Nos. L080398, DEV070051)

Location: 5364 East Lake Sammamish Parkway NE;

Parcel # 182506-9049

Ms. Rice introduced the matter and assigned the Technical Committee Report as Exhibit 1, identifying the following submitted attachments:

Attachments

Exhibit A: Site and Surrounding Zoning

Exhibit B: Site Plan Set

Exhibit C: City Council's Findings and Conclusions on Samm-Red Appeal

Exhibit D: Notice of Decision

Exhibit E: Appeal Application Forms Exhibit F: Notice of Appeal Hearing

Exhibit G: Documentation from City of Redmond's Attorney

STAFF PRESENTATION:

Ms. Thara Johnson, Associate Planner, provided a brief review of the Samm-Red Estates, Open Record Appeal Hearing; L080398/L080399 SEOA, Appeal L110371:

- Aerial Vicinity Map;
- Procedural Summary:
 - o Completeness: 10/20/2008 letter of completeness issued/vested date;
 - o Notice of Application:
 - 11/04/2008 comment period begins;
 - 11/25/2008 comment period ends;
 - o SEPA (project is exempt);
 - 1) Neighborhood Meetings: 1) 05/11/2009; and 2) 01/16/2008;
 - o Notice of Decision: 06/08/2009;
 - o Appeal Deadline: 06/22/2009;
 - o Appeal granted on access by Council: 01/05/2010;
 - o Notice of Decision sent by the City with revised access: 08/18/2011;
 - o Appeal filed on revised layout: 09/01/2011; and
 - o Notice of Appeal Hearing: 01/04/2011 and 10/26/2011;
- Site Plan;
- Appeal Issues:
 - o violation of King County Health Code Titles 12 and 13 as it relates to: 1) Wellhead protection; and 2) Cul-de-sac location;
- Appellant's Requests:
 - o proposed cul-de-sac redesigned or with KC Health Code Title 12 for potable water;

- o proposed lots redesigned to comply with KC Health Code Title 12 for potable water;
- o proposed utility easement for electric, gas, and sewer lines fall within the 100-foot protective zone; and
- o compliance with KC Health Code;
- Recommendation: staff recommends appeal be denied and approval of short plat be upheld, as conditioned:
 - o Project complies with City's Code requirements;
 - City Attorney advises that King County's public health code cannot be enforced by the City; and
 - o State Subdivision Law does not require approval by King County Board of Health for short plats.

APPELLANT TESTIMONY:

Mr. Jim LaBlanc, Appellant, submitted the following documents to the record:

- appellant's written comments on appeal, admitted as Exhibit 2;
- selected RCW citations, admitted as Exhibit 3;
- email exchange between Bob Franklin and the Appellants, dated 05/29/2009, admitted as Exhibit 4;
- email exchange between Bob Franklin and the Appellants, dated 05/29/2009, time stamped 09:27 a.m., admitted as Exhibit 5:
- McBride correspondence to Appellants, dated 10/19/2005, admitted as Exhibit 6;
- screenshot from King County Health Department Drinking Water Program, admitted as Exhibit 7; and
- King County Health Code Chapter 12.24, admitted as Exhibit 8.

Mr. LaBlanc quoted several RZC and RCW citations regarding promotion of public health, short plats, and appropriate provisions for potable water. Mr. LaBlanc added that the City has stated there is no applicable City Code addressing the appellant's requests; therefore, the City has no staff or need to address these issues. Mr. LaBlanc stated the City is not in compliance with State Code; and elaborated that the City should have applicable codes and should require the corresponding permits; or should review, or provide an expert to review, these issues, so as to comply with King County Health Codes.

Ms. Rice called for documents from the previous appeal hearing on this matter to be entered into the record; items added as follows:

- Redmond Hearing Examiner Decision, File No. L080398, dated 09/14/2009, admitted as Exhibit 9;
- Appellant Request for Reconsideration of 09/14/2009 decision, undated, admitted as Exhibit 10; and
- King County DDES Regulatory Review Committee Meeting Minutes, 01/24/2008, admitted as Exhibit 11.

CITY TESTIMONY:

Ms. Johnson offered the City's PowerPoint Presentation into the record; admitted as Exhibit 12. Ms. Johnson added that the City's position remains the same as in the previous appeal – there is

no requirement for the City to require compliance of the Applicant with King County Health Codes prior to issuing the Notice of Decision.

Ms. Johnson asked for clarification of the Appellant's assertion that the proposal should be reviewed as a long plat because there are no short plat provisions addressing the King County Health Code issues. The Appellant confirmed the assertion and stated it is an oversight in the City's Code that should be addressed.

Ms. Johnson confirmed that neither the Redmond Community Development Guide (RCDG - applicable code at the time of vesting), nor the Redmond Zoning Code (RZC - current code), addresses compliance to King County Health Codes for short plats. Mr. Judd Black, Planning Manager, added that the issue was taken into consideration with the drafting of the RZC, and the City Attorney indicated it was not necessary for this item to be addressed in code.

APPLICANT TESTIMONY:

Mr. Dwight Holobagh, Licensed Civil Engineer, Applicant's Representative, provided the following testimony on behalf of the Applicant (*not in attendance*): the applicant has been transparent throughout the process, worked closely with City Staff on the application and necessary changes, and, at the suggestion of the City, made an offer to the Appellant for an agreement. The agreement was not accepted; there is no protective zone easement; and the Applicant concurs with the opinion of the City Attorney on this matter.

Mr. LaBlanc provided testimony regarding the agreement offer; Mr. Holobagh indicated it is not relevant to the matter at hand.

CONCLUSION:

Ms. Rice called for any further comments. The City indicated they would like a chance to respond to the documents submitted by the Appellant. Ms. Rice stated that the record would be held open per the following Order Setting Post-Hearing Submission Schedule for review and submission of documents (*issued November 17, 2011*):

- 1) No later than close of business on November 30, 2011, the City and the Applicant may, at the discretion of each party, submit written comments in response to the materials in Exhibits 2 through 11. Written responses (in the form of memoranda or correspondence to the record) shall be sent via email for expedience to the Office of the Hearing Examiner as explained below. If either party has no response, they shall submit by the deadline a notice of no comment.
- 2) The Office of the Hearing Examiner will forward the responses to the Appellant on the same or the next business day.
- 3) No later than close of business on December 21, 2011, the Appellant may submit written comments replying to the responses, if any, generated for item no. 1 above. The written response (in the form of memorandum or correspondence to the record) shall be sent via email for expedience to the Office of the Hearing Examiner as explained below. If the

Appellant has no response to the replied, he shall submit a notice of no comment by the deadline.

- 4) The Office of the Hearing Examiner will forward the Appellant's reply to City Staff and the Applicant as a courtesy.
- 5) Only the items above may be submitted. No additional evidence will be admitted in the record.
- 6) The record will close on the date the Office of the Hearing Examiner receives the final item identified above, which will be on or before December 21, 2011. The decision will issue 21 days from the date the record closes.
- 7) All responses shall be directed to:
 Office of the Hearing Examiner
 Attention Ms. Liz. Adkisson, Deputy City Clerk
 emadkisson@redmond.gov
 PO Box 97010/3NFN
 Redmond WA 98073
 425.556.2191 ph
- **8**) Procedural questions about this Order may be forwarded by email to the Hearing Examiner via the Office of the Hearing Examiner.

Ms. Rice called for any further comment. The Appellant stated he is not opposed to the development, he is requesting that review of the potable water source be addressed, in accordance with the cited RCW and code sections.

IV. ADJOURNMENT

The public hearing closed at 2:03 p.m., and the meeting adjourned.