

CITY OF REDMOND HEARING EXAMINER MINUTES

February 14, 2011

Redmond City Council Chambers 15670 NE 85th Street, Redmond 7 p.m.

Hearing Examiner

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

Staff

Judd Black, Planning Manager Steven Fischer, Senior Planner Elizabeth Adkisson, Deputy City Clerk

Convened: 7 p.m. Adjourned: 9:55 p.m.

I. CALL TO ORDER

Hearing Examiner Sharon Rice convened the hearing at 7 p.m.

II. DESCRIPTION OF HEARING SEQUENCE AND PROCEDURES

Ms. Rice introduced the matter under consideration, reviewed the sequence of the hearing for the evening, and explained the proceedings. Ms. Rice noted that she will issue a written Recommendation in the matter of the Ardmore Substation Conditional Use Permit application, within 10 business days of the closing of the record.

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 persons were in attendance:

Steven Fischer, Principal Planner, City of Redmond
Judd Black, City of Redmond Development Review Planning Manager
Barry Lombard, Puget Sound Energy (PSE), Applicant Representative
Jens Nedrud, PSE
Lynn Thompson
Carol Jaeger, PSE
Andrew Thatcher
Darrell Mitsunaga, Attorney, representing Bel-Red Real Estate Group LLC
Andrew Kinztler, Attorney, representing 15301 Redmond LLC
Robert Heller, Attorney, represented the Applicant at hearing.

III. PUBLIC HEARING

A. ARDMORE SUBSTATION – Conditional Use Permit (CUP)

L100421 Conditional Use Permit

L100422 SEPA

Request: Conditional Use Permit for construction of a combined

distribution and transmission switching electrical

substation.

Location: 2245 NE Bellevue-Redmond Road, Redmond, Washington

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

Attachments

- 1. Vicinity Map
- 2. Site Plan
- 3. Notice of Application and Affidavit of Publishing
- 4. NOA Public Comments and City Response
- 5. SEPA Checklist and Determination
- 6. SEPA DNS Certificate of Posting and Public Comment
- 7. Notice of Public Hearing and Certificates of Posting
- 8. Preliminary Site Development Plans Reduced
- 9. Full Scale Preliminary Site Development Plans
- 10. Arborist Report
- 11. Tree Exception Request and Approval
- 12. Critical Areas Letter
- 13. Noise Study
- 14. Design Review Board Presentation Materials from 1/20/2011 meeting
- 15. Preliminary Stormwater Report, 11/10/2010
- 16. Geotechnical Report, 08/13/2010

Ms. Rice assigned correspondence received regarding Comments from Sherwood Forest Community Club, dated 02/11/2011, as Exhibit 2.

STAFF PRESENTATION:

Mr. Steven Fischer, Principal Planner, reported on the Ardmore Substation Conditional Use Permit application:

- Vicinity Map-Overlake;
- Vicinity Map-Site;
 - o Zone: Overlake Design District (OV-3);
 - o Address: 2245 Bellevue-Redmond Road;
 - o Site Area: 1.51 acres:

- Site Plan;
- Site Plan Future Trail Location;
- Tree Preservation Plan;
 - o saving 2.6 percent of the significant trees;
 - o need to replace 64 trees;
- Landscape Plan;
 - o Plant Schedule;
 - o replacing 85 trees;
- Elevation photos:
 - o Bel-Red Road;
 - o NE 24th Street:
- Process;
 - o Notice of Application (CUP):
 - 12/01/2010 comment period begins;
 - 12/22/2010 comment period ends;
 - o SEPA:
 - 12/27/2010 Determination of Non-Significance (DNS) issued;
 - o Notice of Public Hearing:
 - \bullet 01/24/2011 issued:
- Conditional Use Permit (CUP) Decision Criteria:
 - Consistent with the Redmond Community Development Guide (RCDG) and the Comprehensive Plan;
 - proposal consistent;
 - local and regional facilities are allowed as a conditional use;
 - Designed in a manner which is compatible with and responds to the existing or intended character, appearance, quality of development, and physical characteristics of the subject property and immediate vicinity;
 - will provide for current and future energy needs;
 - artwork added to project;
 - provide for future pedestrian trail;
 - allows for demo of Interlaken substation and removal of transmission lines;
 - The location, size and height of the buildings, structure, walls and fences, and screen vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
 - bulk and mass is less than allowed under zoning;
 - substation is enclosed within a 10" architectural wall and landscaped;
 - pedestrian and vehicular circulation is not impacted;
 - two sections of existing transmission line to be removed;
 - The type of use, hours of operation, and appropriateness of the use in relation to adjacent uses shall be examined to determine if there are usual hazards or characteristics of the use that would have adverse impacts;
 - 24-hour facility;
 - maintenance staff will visit the site two to four times a month;
 - Requested modification to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;

- driveway spacing is less than 150 feet. These are existing conditions and the deviation has been approved by the Technical Committee;
- grading will create slopes at 2H:1V to accommodate the future pedestrian pathway. This deviation has been approved by the Technical Committee;
- the height of the retaining wall will be as high as 18.5 feet. This deviation has been approved by the Technical Committee;
- the project proposes to save less than 35 percent of the significant trees on site. This is due to grading and proximity to high voltage electrical lines. The Technical Committee has approved this deviation;
- The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
 - the project will not generate daily pedestrian or vehicular traffic, maintenance staff will visit the site two to four times a month;
 - new sidewalks along NE 24th and Bel-Red Road to be constructed;
 - provisions for future pedestrian trail;
- The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities;
 - the project will increase the capacity and reliability of electrical power in the surrounding area;
 - the project will now increase the demand for police, fire, or schools;
- If applicable, the application must also conform to the standards established in Chapter 20D.170 RCDG, Special Uses;
 - Special Uses standards do not apply to this proposal;
- Recommendation:
 - recommend approval of the Conditional Use Permit with conditions.

Ms. Rice queried whether all deviations have been reviewed and administratively approved. Mr. Fischer confirmed all deviations have been reviewed and approved by the Technical Committee.

Ms. Rice entered the City's PowerPoint Presentation into the record as Exhibit 3.

Mr. Fischer submitted the following additional exhibits to the record:

- Memorandum from Steve Fischer to Examiner, dated 02/14/2011, (regarding revised recommended Public Works conditions); entered into the record as Exhibit 4;
- Memorandum from Steve Fischer to Examiner, dated 02/14/2011, (regarding revised recommended Fire conditions); entered into the record as Exhibit 5;
- Affidavits of Notice of Public Hearing, entered into the record as Exhibit 6;
- public comments, entered into the record as Exhibits 7a. through 7l., respectively, from the following:
 - a. Letter from Darrell Mitsunaga, Attorney for Bel-Red Real Estate Group LLC, dated 01/21/2011, with the following attachments:
 - 1. Complaint for Quiet Title and Prescriptive Easement;
 - 2. Quit Claim Deed, 2003;
 - 3. Legal Description;

- 4. Copy of Site plan with shaded areas; and
- 5. Copy of site plan with claimed prescriptive easement shaded in green and claimed adversely possessed area shaded in yellow;
- b. Letter from Andrew Kinstler, Attorney for 15301 Redmond LLC, dated 02/11/2011;
- c. Jagwinder and Baljit Brar Comments, dated 02/07/2011;
- d. Russell Paravecchio Comments, dated 01/18/2011;
- e. Linda Yoo comments, dated 01/20/2011;
- f. Winston Lee comments, dated 01/19/2011;
- g. Letter from Planning Staff to Lee, dated 01/24/2011, with attached notice of hearing;
- h. Letter from Planning Staff to Yoo, dated 01/24/2011, with attached notice of hearing;
- i. Letter from Planning Staff to Paravecchio, dated 01/24/2011, with attached notice of hearing;
- j. Email comments from Jim Copitzky, dated 01/10/2011;
- k. Morris Piha comments, dated 02/14/2011; and
- 1. Email from Mr. Kinstler, dated 02/14/2011.

Ms. Rice queried the reason for the CUP overlay-residential. Mr. Fischer referred to RCDG 20C.45.20 and the Overlake Districts Map; indicating that the project site area is located in a mixed-use area; based on the table of uses (RCDG 20C.45.30-040) local facilities CUPs are permitted; with conditions.

Ms. Rice queried whether the concerns of the Design Review Board regarding artwork have been addressed. Mr. Fischer advised artwork plans are in discussion; and final approval by the Design Review Board is not required.

Ms. Rice questioned an inconsistency in the staff report in regards to landmark tree removal. Mr. Fischer will review and respond to question later in the hearing.

APPLICANT TESTIMONY:

Mr. Barry Lombard, Puget Sound Energy, presented testimony, and exhibits, in regards to the application:

- design has been in creation for over three years, and has involved community input through open meetings, and personal meetings;
- site is a combined switch/distribution center; designed to meet the current and long-term needs of the area; will be a public benefit to residents and businesses;
- the substation will provide service to the Interlaken and Overlake areas; and eliminate the current Interlaken site;
- the design of the new substation will blend with the current neighborhood design, and meet the future vision for the Overlake area; and
- the applicant has reviewed the revised conditions of approval of the City.

Mr. Lombard submitted the following documents into the record; Ms. Rice assigned as follows:

- Ardmore Substation Project: existing electric facilities removal (one page, six small photographs and/or photo-simulations); Exhibit 8a;
- existing transmission line routes and Ardmore Substation site (photomap); Exhibit 8b;
- initial plan for Ardmore Substation and transmission line (photomap); Exhibit 8c;

- combined Ardmore//Interlaken Substation Site and transmission line route; Exhibit 8d; and
- hearing submittal packet, 02/14/2011; Exhibit 9; attachments:
 - 1. Redmond Comprehensive Plan Map UT-2, Proposed Electrical Facilities;
 - 2. Ardmore Substation Project pre-application Project Summary document;
 - 3. conceptual structure envelope comparison;
 - 4. photo-simulation of visual impacts of proposal from Office Depot Parking lot;
 - 5. new development adjacent to Substation, President Park, Renton; and
 - 6. new development adjacent to Substation, Kenilworth, Redmond.

PUBLIC TESTIMONY:

Mr. Darrell Mitsunaga, Attorney, representing Bel-Red Real Estate Group LLC, presented testimony regarding:

- objection to items being added to the record at the time of the hearing;
- an adverse possession issue regarding a prescriptive easement relating to parking area usage; relief requested action should hold until claim has been decided;
- a quiet title complaint has been filed in court, and is not yet resolved;
- the City says neither of these issues impact the application at hand;
- the ownership interest in property signature page in the application packet did not, and should have, included Bel-Red LLC; and
- the landscaping plan presented in the application would be in conflict with the previously mentioned issues; the City should not be allowed to move forward with the application until the other issues have been resolved.

Mr. Mitsunaga submitted a packet of documents into the record on behalf of Bel-Red Real Estate Group LLC; assigned Exhibit 10; and included the following:

- a. aerial photograph of site from Google Maps;
- b. Statutory Warranty Deed, 07/13/1989, with legal description and easement terms and conditions;
- c. Quit Claim Deed (reflecting name change);
- d. Statutory Warranty Deed for APN 262505-9166-07, with legal description and special exceptions to title;
- e. letter to Gerald Lutz from Darrell Mitsunaga, 12/15/2010;
- f. letter to Steven Fischer from Darrell Mitsunaga, 12/15/2010, with parcel map and attached site plan with yellow shading, and *Halverson v. City of Bellevue* (case law print out);
- g. letter to Steven Fischer from Darrell Mitsunaga, 01/21/2011, with attached: Quiet Title Complaint; Quit Claim Deed; legal description; site plan shaded in green and yellow;
- h. Halverson v. City of Bellevue (case law);
- i. Harrison v. Stevens County (case law);
- j. RCDG 20F.30.20;
- k. Redmond conditional use permit application form; and
- 1. Redmond general permit application form submitted by Applicant.

Mr. Andrew Kinztler, Attorney, representing 15301 Redmond LLC, presented testimony regarding:

- client includes Office Depot/Tuesday Morning property; which shares boundary with the proposal site;
- requests relief in the form of denial of the CUP application the application violates the required standards; improper notification and inclusion of neighboring property owner;
- objection to items being added to the record at the time of the hearing; would like the record to be held open for additional review and comment on items;
- additional items of concern: underground lines not approved; proposed power lines effect on proposed growth; landscape/tree preservation plan; property area/line issues; evidence that substation is needed at this time; and evidence regarding other site options researched for this project.

The Applicant, Applicant Representatives, and Experts, provided the following information in response to public testimony:

- In regards to the Mitsunaga testimony:
 - o claims are pending before the KCSC, and being denied by PSE; it is not appropriate for the Hearing Examiner to decide on these claims;
 - o the Technical Committee has approved the application;
 - o state law does not apply in this case; and
 - o the adjoining property owner is not required to be a signed on the application.
- In regards to the Kintzler testimony:
 - o notification claim is false; property owners were properly notified and invited to comment;
 - o the underground lines are an option, not a requirement, and can be rerouted around properties;
 - o review of proposed landscape plan; can be redesigned;
 - o testimony regarding need for the substation;
 - o testimony regarding the science and stigma of electromagnetic fields (EMF);
 - o testimony regarding properties currently developed adjacent to substations;
 - o substations are an allowed or conditional use per the code; essential public facilities; and
 - o the project is in compliance with all Redmond codes, and should be approved.
- Additional documents added to the record:
 - o Resume of Andrew H Thatcher; Exhibit 11;
 - o World Health Organization, Fact Sheet No. 322, June 2007; Exhibit 12; and
 - o The Etiology of Epidemiologic Perseveration, by David A. Savitz, May 2010; Exhibit 13.

Mr. Fischer, provided the following testimony in response to Hearing Examiner query and public testimony:

- the tree count numbers in the conditions of approval are accurate; for every one tree removed, three will be planted;
- in regards to the Mitsunaga testimony:
 - o the legal issues presented are a civil matter between the two property owners, and the City is not a party; the KCSC has not indicated that the City should be added to the suit as a party, nor for the City to cease action on the permit application;
- In regards to the Mitsunaga testimony:
 - o the trail location represented in documents is a proposal;
 - o Mr. Fischer reviewed the future vision for Overlake Village Subarea (including background information, light rail proposal through area, creation of recreational amenities, future trail system); and

o substation regional facilities are allowed in this zoning as a conditional use.

CONCLUSION

Ms. Rice stated that the record would be held open in accordance with the following terms (detailed in a Post Hearing Order issued Wednesday, 02/16/2011):

- 1) By close of business on 02/22/2011, 15301 Redmond LLC, through their attorney, shall provide to the Office of the Hearing Examiner a written memorandum addressing evidence offered at the hearing that was not available for review prior to the hearing. The Office of the Hearing Examiner will distribute the memorandum to the Examiner, the Applicant, and parties of record on the same or next business day.
- 2) By close of business on 02/22/2011, Bel-Red Real Estate Group LLC, through their attorney, shall provide to the Office of the Hearing Examiner a written memorandum addressing evidence offered at the hearing that was not available for review prior to the hearing. This memorandum may correct or amend (but not add to) the list of items included as Exhibit 10 above (which did not contain a cover sheet or table of contents) to ensure the final exhibit list is correct. The Office of the Hearing Examiner will distribute the memorandum to the Examiner, the Applicant, and parties of record on the same or next business day.
- 3) By close of business on 03/01/2011, the City shall provide to the Office of the Hearing Examiner a written memorandum responding to both documents submitted in response to items 1 and 2 above. The Office of the Hearing Examiner will distribute the City's memorandum to the Examiner, the Applicant, and parties of record on the same or next business day.
- 4) By close of business on 03/01/2011, the Applicant shall provide to the Office of the Hearing Examiner a written memorandum responding to both documents submitted in response to items 1 and 2 above, and responding at their option to the document submitted by the City in response to item number 3 above. The Office of the Hearing Examiner will distribute the Applicant's memorandum to the Examiner, the City, and parties of record on the same or next business day.
- 5) Only the four documents identified shall be admitted into the record of this matter. The record is closed as to any other evidence. The record will close on 03/01/2011, and the recommendation in this matter will issue by 03/15/2011.

IV. ADJOURNMENT

The public hearing closed at 9:55 p.m., and the meeting adjourned.