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RESOLUTION NO. 858

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, APPROVING REVISED RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE CITY HEARING EXAMINER.

WHEREAS, the City Hearing Examiner has recommended revisions to the general rules of procedure for proceedings before the Hearing Examiner which have been previously approved by the City Council and included in the Community Development Guide as an appendix,

WHEREAS, after having reviewed the proposed changes, the City Council has determined that the changes should be made and that the revised rules should be adopted as a replacement of those currently set forth in Appendix A to the Community Development Guide, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Rules of General Application for proceedings before the Hearing Examiner of the City of Redmond, Washington, as set forth on Exhibit A attached hereto and incorporated herein by this reference as if set forth in full, are hereby approved.

Section 2. The previously applicable rules for proceedings before the Hearing Examiner which have been included in the Community Development Guide as Appendix A shall be deleted and replaced with the rules approved by this Resolution.

RESOLVED this 15th day of January, 1991.

APPROVED:

Doreen Marchione
MAYOR, DOREEN MARCHIONE

ATTEST/AUTHENTICATED:

Doris A. Schaible
CITY CLERK, DORIS A. SCHAIBLE

FILED WITH THE CITY CLERK: 01-10-91
PASSED BY THE CITY COUNCIL: 01-15-91
RESOLUTION NO. 858

**RULES GOVERNING LAND USE AND
ZONING PROCEEDINGS IN THE
CITY OF REDMOND**

May 27, 1980

AMENDED:

November 12, 1980

June 25, 1985

February 28, 1989

January 16, 1990

EXHIBIT A

APPENDIX A

RULES OF GENERAL APPLICATION

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE CITY OF REDMOND, WASHINGTON**

Pursuant to Section 20F.10.080(35) of the Community Development Guide of the City of Redmond, the following constitutes all land use and zoning proceedings before the Hearing Examiner of the City of Redmond, Washington.

I. DEFINITIONS

1.1 Definitions

"Applicant" means those applying to the City of Redmond for approval of land uses that conform to the City's goals, policies, plans and programs of development.

"City" means the City of Redmond, Washington.

"Council" means the Redmond City Council.

"Departmental Staff" means departments of City of Redmond, Washington.

"Redmond Community Development Guide" (RCDG) means the City of Redmond Community Development Guide and it includes all development principles and standards adopted by the City Council as objectives, goals, policies and plans of the City of Redmond, Washington.

"Examiner" means the Hearing Examiner of the City of Redmond.

"Ex parte communication" means written or oral communications not included in the public record and made outside of a public hearing.

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner and shall include any party in a contested case.

"Party of record" means:

- a. person who testifies at a hearing;
- b. the applicant, developer or any of their agents; and,
- c. persons submitting written arguments dealing with the merits of a case.

II. EX PARTE COMMUNICATION

2.1 Expeditious Proceedings

It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

2.2 Ex Parte Communications

- a. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for an adjudicatory hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters.
- b. The Hearing Examiner shall not communicate ex parte directly or

indirectly with any person, nor his or her agent, employee or representative, interested in a particular petition or application which is designated for an adjudicatory hearing, with regard to the merits of that, or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters, nor assistance to the Hearing Examiner in viewing the land or building involved in the hearings.

- c. If a substantial prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing Examiner on whether to disqualify himself or herself as Hearing Examiner for that particular hearing.

III. NATURE OF PROCEEDINGS

3.1 Frequency

Hearings will normally be scheduled on the first and third Mondays of every month. Consistent with the requirements of expedition, hearings may be held on a more frequent basis.

3.2 Format

The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become the most readily and efficiently available to the Hearing Examiner.

3.3 View Trip

When necessary to a full understanding of the case, the Hearing Examiner shall inspect the site prior or

subsequent to the hearing. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

3.4 Record of Hearing

- a. Electronic Recordation. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the public on request and the reasonable cost of such copying shall be paid by the requester.
- b. Copies of any written materials in the record may be obtained by any interested person, although that person shall be responsible for paying the cost of reproducing such material.

3.5 Computation of Time

Computation of any period of time prescribed or allowed by these rules shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday or national or State holiday, the period shall run until the end of the next following business day .

IV. RIGHT OF PARTIES

4.1 Rights of Parties

Every applicant shall have the right of due notice, cross-examination (rebuttal), presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony.

Cross-examination is permitted as necessary for a full disclosure of the facts.

4.2 Notice Requirements of Hearings and Filings

a. All notice and time requirements and methods of notification shall be governed by the standards as set forth in RCDG 20F.20.070 (15)(a), (b), and (c).

b. Method of notification:

1. Written notices shall be posted in the immediate vicinity of the land or structure in question.
2. Additional written notices shall be posted in official posting places within the city and in accordance with RCDG 20F.20.070 (15)(b).
3. Notice shall be published in accordance with RCDG 20F.20.070(15)(b).
4. Notice mailed to property owners within a 300-foot radius of the property line of the land or project in question. Notice mailed to adjoining property owners for variances and general development permit applications.

c. Affidavit of Notice:

A notarized affidavit attesting to the written notice of a given public hearing shall be made a part of each official case record.

V. PRESIDING OFFICIALS

5.1 Presiding Officials

a. Hearings in administrative proceedings shall be presided over by a duly qualified Hearing Examiner.

b. The Hearing Examiner shall have all of the authority and duties as granted him or her in RCDG 20F.10.080(10). Included in the authority and duties of the Hearing Examiner are the following: to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following:

1. to administer oaths and affirmations;
2. to issue subpoenas;
3. to rule upon offers of proof and receive evidence;
4. to regulate the course of the hearings and the conduct of the parties and their agents;
5. to question any party presenting testimony at the hearing;
6. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
7. to consider and rule upon all procedural and other motions appropriate to the proceeding; and,
8. to make and file recommendations or decisions.

c. Interference. In the performance of his or her adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.

- d. Should the Hearing Examiner be disqualified for any reason, a Pro Tem Hearing Examiner may be appointed pursuant to RCDG 20F.10.080(45).

5.2 Presence of Legal Counsel at Public Hearings or Meetings

At the request and discretion of the Hearing Examiner, a representative of the City Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

VI. CONDUCT OF HEARINGS

6.1 Content of the Record

The record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- a. the application or petition;
- b. the departmental staff reports;
- c. all evidence received or considered, which shall include all exhibits and other materials filed;
- d. a statement of all matters officially noticed;
- e. a decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. recordings made on electronic equipment; and,
- g. an environmental determination made pursuant to the State Environmental Policy Act (SEPA).

6.2 Development of Record

A public hearing shall include, but not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; a report by the departmental staff which shall include introduction of the official file, reference to visual aids (maps), and a summary of the recommendation of the Department; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

6.3 Legal Counsel

Parties will be allowed to be represented by legal counsel at all stages of the hearings.

6.4 Content and Form of Staff Reports

The staff report shall include the following:

- a. Names and addresses of the owner(s) and applicant(s) of the subject property.
- b. A brief summary of the requested action.
- c. A common description of the subject property and a legal description of the subject property.
- d. A technical data summary of the Land Use Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; and information on the vegetation on the property.

- e. the current access to the subject property and the proposed access to the subject property.
- f. An in-depth analysis of the proposed project and its potential effects on the following elements of the City:
 - 1. natural features;
 - 2. character and design, including population figures;
 - 3. human resources;
 - 4. housing;
 - 5. economic development;
 - 6. transportation;
 - 7. community facilities, services and institutions;
 - 8. government jurisdiction boundaries;
 - 9. neighborhoods;
 - 10. land use plans; and,
 - 11. land use regulations.
- g. A history of the requested action and a history of the development in the surrounding properties.
- h. A summary of any other requested land use permits in the area.
- i. The compatibility and impact of the proposal on the existing development and the probable character of the proposal.
- j. A summary of the reports or recommendations of any other agencies consulted.
- k. Appropriate maps of the subject property.
- l. The result of the determination pursuant to the State Environmental Policy Act.
- m. Staff's conclusions and recommendations.
- n. summary of public input or reaction to proposal.

6.5 Continuances of Hearings

If, in the opinion of the Hearing Examiner, more testimony and evidence is necessary to make a recommendation, he or she may continue the hearing with or without date. If continued without date the Hearing Examiner shall reconvene the hearing or close the hearing within a reasonable time.

6.6 Evidence

- a. Burden of proof. In each particular proceeding, the petitioner, applicant or the proponent of an individual petition or application shall have the burden of proof.
- b. Admissibility. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall retain discretion on the admissibility of all evidence.
- c. Copies. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- d. Official notice. The Hearing Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or

her specialized knowledge. When any recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such notices of fact shall be granted any affected person making timely motion therefore. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

- e. Evidence received subsequent to the hearing. If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- f. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

6.7 Continuation of Hearing

- a. Cause. The Hearing Examiner may continue or reopen proceedings for any good cause he or she deems reasonable and appropriate provided an order is entered prior to the filing of the recommendation or decision.
- b. Notification. If the Hearing Examiner determines at a hearing that there is good cause to continue such proceeding and specifies the date, time and

place, no further notice is required. When determination for further hearing is made following a hearing on a given matter, all parties of record shall be provided not less than ten (10) days notice of the date, time, place and nature of the subsequent hearing. Such notice shall also be published in the City official newspaper.

VII. WITHDRAWAL OF APPLICATION OR PETITION

7.1 Withdrawal Prior to Service of Official Notice

If a withdrawal request is made before the official notice of the public hearing is served, the applicant or petitioner shall notify the Planning Department of the withdrawal request and the withdrawal shall be automatically permitted.

7.2 Withdrawal Made Any Other Time

If a withdrawal request is made at any time other than that mentioned in 7.1, the Hearing Examiner shall use discretion in allowing or disallowing the request.

VIII. RECOMMENDATION

8.1 Written Recommendations

A written report of findings, conclusions and recommendations shall be forwarded to the City Council and the parties of record after the conclusion of a public hearing. The findings, conclusions and recommendations shall indicate how the recommendations carry out the goals, policies, plans and requirements of the RCDG and other policies and objectives of the City.

8.2 Content of Recommendation

A recommendation shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall include not only the findings of the ultimate facts but also the basic facts leading up to the ultimate question. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of each fact found upon each contested issue of fact.
- c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall make reference to the effect of the recommendation with reference to the Comprehensive Plan, as well as the effect of both approval and denial on property in the vicinity, business or commercial aspects, if relevant, and on the general public.
- d. The appropriate rule, order or relief. The recommendation shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

- b. If within five (5) days after the Public Hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.
- c. Reconsideration. Any interested person may file a written request with the Hearing Examiner for reconsideration within ten (10) business days of the date of the Hearing Examiner's recommendation. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within ten (10) business days after the date of the filing of the request for reconsideration by either denying the request, issuing a revised recommendation or calling for an additional public hearing. If an additional hearing is called for, the notice of said hearing shall be mailed to all parties of record not less than seven (7) days prior to the hearing date.

8.3 Procedure for Reopening Hearing or Rehearing

- a. At any time prior to the filing of the recommendation

IX. DECISION

9.1 Written Decision

A written report of findings, conclusions and decision shall be forwarded to the City Council and the parties of record after the conclusion of a public hearing. The findings and

conclusions shall indicate how the decision carries out the goals, policies, plans and requirements of the RCDG and other policies and objectives of the City.

9.2 Content of Decision

A decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall include not only the findings of the ultimate facts, but also the basic facts leading up to the ultimate questions. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of each fact found upon each contested issue of fact.
- c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall make reference to the effect of the decision with reference to the Comprehensive Plan, as well as the effect of both approval and denial on property in the vicinity, business or commercial aspects, if relevant, and on the general public.
- d. The appropriate rule, order or relief. The decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

9.3 Procedure for Reopening Hearing or Rehearing

- a. At any time prior to the filing of the decision, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- b. If within five (5) days after the public hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.
- c. Reconsideration. Any interested person may file a written request with the Hearing Examiner for reconsideration within ten (10) business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within ten (10) business days after the date of the filing of the request for an appeal by either denying the request, issuing a revised decision, or calling for an additional public hearing. If an additional hearing is called for, notice of said hearing shall be mailed to all parties of record not less than seven (7) days prior to the hearing date.

X. APPEALS

10.1 Appeals

When all reconsideration periods have expired and the Hearing

Examiner has issued a final decision, the decision may be appealed to the City Council. Appeals must be written and be filed with the Department of Planning and Community Development no later than ten (10) business days after the date of the Hearing Examiner's final action.