

0020.150.014E
LCM/ko
08/12/86

ORIGINAL

ORDINANCE NO. 1336

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON,
AMENDING THE REDMOND MUNICIPAL CODE AND COMMUNITY
DEVELOPMENT GUIDE, DGA-86-8, IN ORDER TO REVISE
REGULATIONS GOVERNING APPEALS, MODIFICATION OF FINAL
APPROVAL ORDERS AND REVOCATION OF APPROVAL.

WHEREAS, the Planning Commission conducted a public hearing on June 11, 1986, and at the conclusion thereof, forwarded its recommendations to the City Council concerning proposed amendments of the Community Development Guide, DGA-86-8, concerning appeals, modification of final approval orders and revocation of approval, and

WHEREAS, the City Council considered the recommendations of the Planning Commission, Planning Director and City Attorney at its regular meeting of August 5, 1986, and determined that the Redmond Municipal Code and Community Development Guide should be amended as set forth hereinafter, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 20F.20.200 of the Redmond Municipal Code and Community Development Guide is hereby amended to read as follows:

20F.20.200 Appeals

200.200(05) Purpose/Scope - The purpose of this section is to provide for the review of decisions by the Technical Committee, other administrative officials, the Hearing Examiner, and the Design Review Board made in the course of interpretation and administering the Development Guide and State Environmental Policy Act (RCW 43.21C). This section shall not govern appeals of actions taken by the City on Shoreline Development Permit applications which shall be governed by RCW Chapter 90.58, the Shoreline Management Act of 1971, as amended.

20.200(10) Right of Appeal - Any person adversely affected by any of the following actions shall have the right to appeal to the city Council:

- (a) A final decision on a land use permit or other application for approval provided for by the Community Development Guide;
- (b) A written interpretation of any provision of the Community Development Guide;

- (c) Any other action for which a right of appeal is provided by another provision of the Community Development Guide or State Law.

20.200(12) City Council and Hearing Examiner to Hear Appeals.

(1) The Hearing Examiner shall hear and render a final decision in the case of appeals from the following actions:

- (a) SEPA Threshold decisions
- (b) Determination of the adequacy of a Final Environmental Impact Statement.

Pursuant to RCW 43.21C.075(3)(a) "Appeals", appeals from the decision of the Hearing Examiner on (a) and (b) above shall be made directly to the Superior Court.

(2) The City Council shall render a final decision in all other appeals. The Council may hear such appeals or delegate the hearing function to the Hearing Examiner as provided in Subsection (25)(b), below.

20.200(15) Time for Filing Appeals - All appeals filed pursuant to this section must be filed in writing with the Department of Community Development within fourteen (14) working days of the date of the decision appealed from. In the case of appeals from a determination of non-significance governed by WAC 197-11-34(2)(a), the "date of the decision appealed from" shall mean the date upon which the determination becomes final (WAC 197-11-340(2)(d) and 390(2)(a)).

20.200(20) Form of Appeal - All appeals filed pursuant to this Section shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the public hearing or consideration of approval, which shall constitute the basis of the appeal.

20.200(25) Procedure

- (a) On receipt of a timely written notice of appeal with respect to an action giving rise to a right of appeal as provided in Section 20F.20.20(10), "Right of Appeal", the Director of the Department of Community Development or his or her designee shall advise the City Council, or Hearing Examiner, as appropriate, of the pendency of the appeal and request that a date for considering the appeal be established.
- (b) In appeals to be finally decided by the City Council, except appeals from the final decision of the Hearing Examiner, the City Council shall have the option of directing that the appeal be heard before the Hearing Examiner who shall forward a recommendation to the City Council which shall take final action on the appeal. Referral to the Hearing Examiner may be made by motion approved by a majority of the Councilmembers present at the time of voting.
- (c) At the time of advising the City Council of the pendency of an appeal, the Department of Community Development shall make its recommendation to the City Council as to whether the appeal should be heard by the Hearing Examiner or the City Council. The recommendation and determination shall be based on relevant considerations including, but not

limited to, the time expected to be required to hear the appeal and the need to create a full, formal record.

20.200(30) Standard of Review

- (a) An appeal of a final decision of the Hearing Examiner shall be based upon the record of the hearing conducted by the Hearing Examiner. Testimony or other evidence and information not presented to the Hearing Examiner shall not be considered unless the Council finds there is good reason to take additional evidence, in which case the matter shall be considered at a public hearing before the City Council, with notice given in the same manner as required for the hearing before the Hearing Examiner. In the event the City Council elects to conduct a public hearing and take new evidence, its decision shall be made only on the basis of facts presented at the hearing (de novo). When the City Council has not conducted a public hearing it shall uphold the decision of the Hearing Examiner unless, based upon the record of the Hearing Examiner's proceedings, it is determined that the Hearing Examiner's decision is clearly erroneous.
- (b) In the case of all appeals, other than appeals from a final decision of the Hearing Examiner, all relevant evidence shall be received during the hearing on the appeal.
- (c) Unless substantial relevant information is presented which was not considered by the administrative official or official body whose decision has been appealed from, such decision shall be accorded substantial weight, but may be reversed or modified by the City Council if, after considering all of the evidence in light of the applicable goals, policies, and provisions of the City Code and Community Development Guide, the City Council determines that a mistake has been made. When substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the City Council shall make its decision only upon the basis of the facts presented at the hearing of the appeal (de novo), or may elect to remand the matter for reconsideration by the decision maker in light of the additional information.

20.200(35) Record - For appeals to be decided on the basis of new evidence submitted at the hearing (de novo), the City shall provide for a record that shall consist of the following:

- (a) Written findings and conclusions; and
- (b) A taped or written transcript.

20.200(40) Judicial Review - Limitation on Time for Filing Action - Exemption of Administrative Remedy - Unless otherwise provided by State Statute, all actions seeking review of a final action of the City, whether in the form of an appeal, declaratory judgment action, petition for writ of review or other extraordinary writ or in any other form, shall be filed with the court within fourteen (14) working days of the decision which is sought to be reviewed and otherwise shall be barred. In the case of quasi-judicial actions of the City Council subject to reconsideration pursuant to Redmond

Municipal Code Section 2.04.280, the appeal period shall commence upon expiration of the reconsideration period.

No action to obtain judicial review may be commenced unless all rights of administrative appeal provided by the Development Guide or State Law have been exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant. A copy of each transcript prepared by an appellant shall be submitted to the City for confirmation of its accuracy.

Section 2. The Redmond Municipal Code and Community Development Guide is hereby amended by revising Section 20F.20.120 thereof to read as follows:

20F.20.120 Modification of Final Order

- (a) This section governs requests to modify any final approval granted pursuant to Chapter 20F.20 of the Community Development Guide excluding all approvals granted by passage of an ordinance or resolution of the City Council and requests to revise a plat governed by Sec. 20F.20.150 "Subdivision".
- (b) Requests for modifications of final approval orders shall be made in writing and shall be submitted to the Planning Department in the manner and form prescribed by the Planning Director.
- (c) The Technical Committee shall determine whether the requested modification is major or minor. Modifications shall be deemed major unless the following criteria are satisfied:
 - (1) No new land use is proposed;
 - (2) No increase in density, number of dwelling units or lots is proposed;
 - (3) No changes in the location or number of access points is proposed;
 - (4) No reduction in the amount of landscaping is proposed;
 - (5) No reduction in the amount of parking is proposed;
 - (6) No increase in the total square footage of structures to be developed is proposed;
 - (7) No increase in height of structures is proposed.

Examples of minor modifications are lot line adjustments, minor relocations of buildings or landscaped areas, and minor changes in building elevations, however this list is not all inclusive.

- (d) Proposals which satisfy the criteria set forth in this section may be acted upon by the Technical Committee without a public hearing.
- (e) Proposals not satisfying these criteria shall be deemed major modifications and shall be acted upon by the Hearing Examiner. The Hearing Examiner shall render a final decision after conducting a public hearing in accord with the notice procedures specified in the case of the approval which is sought to be modified. If the application resulting in the approval which is the subject of the request for modification was reviewed by the Design Review Board, then the Board shall review

the request for a major modification and make its recommendations to the Hearing Examiner.

- (f) The criteria for approval of a request for a major or minor modification shall be those criteria governing original approval of the permit which is the subject of the proposed modification.

Section 3. Section 20F.20.130 of the Redmond Municipal Code and Community Development Guide is hereby amended to read as follows:

20F.20.130 Revocation of Approval

20.130(05) Revocation - Final approval of any application may be revoked by the City Council following reasonable notice to the party granted the approval and a public hearing before the City Council if it determines that the applicant intentionally gave false information, misrepresented the application or is not carrying out the terms of the final approval order.

20.130(10) Alternative - The City may use a board created under the rules of the American Arbitration Association to determine whether a material violation occurred. The City and applicant shall agree to the use of the Association prior to the City invoking this paragraph.

Section 4. The Redmond Municipal Code and Community Development Guide is amended by adding a new Section 2.04.280 thereto to read as follows:

2.04.280 Reconsideration of Quasi-Judicial Actions

- (1) Any request or motion for reconsideration of a quasi-judicial action of the City Council must be made in writing to the City Clerk or orally to the City Council in an open public meeting, no later than the next regular City Council meeting following the meeting at which the action was taken. During the reconsideration period, no ex-parte communication shall be made to any City Council member concerning the quasi-judicial action.
- (2) In the event the City Council elects to reconsider a quasi-judicial action, no revision to the action shall be made prior to giving those parties directly affected by the proposed revision notice of the proposed revision and a reasonable opportunity to be heard concerning it.
- (3) No quasi-judicial action of the City Council shall be final for any purpose until completion of the next regular City Council meeting following the meeting at which the action was acted upon by the City Council.
- (4) As used in this section "regular meeting" shall mean any regularly scheduled meeting of the City Council at which final action may be taken. Council study sessions and special meetings of the Council shall not be considered regular meetings of the City Council for purposes of this section.

(5) Procedural matters not governed by this section shall be governed by the current edition of Roberts Rules of Order.

Section 5. This ordinance, being an administrative action, is not subject to referendum and shall take effect five (5) days after publication of the attached summary which is hereby approved.

APPROVED:

Doreen Marchione
MAYOR, DOREEN MARCHIONE

ATTEST/AUTHENTICATED:

Doris A. Schaubel
CITY CLERK, DORIS SCHAIBLE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY James C. Martin

FILED WITH THE CITY CLERK:	August 28, 1986
PASSED BY THE CITY COUNCIL:	September 2, 1986
PUBLISHED:	September 7, 1986
EFFECTIVE DATE:	September 12, 1986
ORDINANCE NO. <u>1336</u>	