

**BEFORE THE HEARING EXAMINER  
FOR CITY OF REDMOND**

In the Matter of the Appeal of	)	NO. LAND-2013-00745
	)	
	)	
<b>Natural and Built Environments, LLC</b>	)	<b>Vision 5 Impact Fee Appeal</b>
	)	
	)	
Of the City's Assessment of Additional	)	Decision on Reconsideration.
Impact Fees upon Issuance of the Fourth	)	
<u>Revision of Building Permit No. B120125</u>	)	

*Background*

On August 6, 2013, the City of Redmond hearing examiner issued findings, conclusions, and a decision (Decision) in the above-captioned matter, denying the appeal. On August 19, 2013, counsel for Natural Built Environments, LLC (Appellant) submitted a request for reconsideration (Request). In response to the examiner's subsequent order, the City Attorney submitted responsive argument on August 29, 2013.

*Discussion*

I. In the Request, counsel for Appellant asserted: "This case is about whether the impact fees imposed on Vision 5 violate the requirements of state law, not about whether Mr. Odle reasonably interpreted a code provision that is unconstrained by state law."

It is not clear on what grounds Counsel argues that city ordinances are unconstrained by state law. Regardless, Appellant appealed a Type I administrative decision made by the Director of Planning and Community Development (Director). Neither the city's impact fee code nor its land use procedures code contains provisions directing that impact fee appeals be reviewed for consistency with RCW 82.02.050. As stated in conclusion 5 (Decision, page 16), whether the City's adopted impact fee ordinance, Transportation Master Plan, multimodal plan-based concurrency system, or any portion of the City's Comprehensive Plan Parks or Recreation plans is violative of RCW 82.02.050 *et seq* is beyond the scope of the authority conferred on the City of Redmond hearing examiner by the City's legislative enactments.<sup>1</sup>

2. In the Request, Appellant's counsel argued that the hearing examiner's deference to an interpretation of Redmond's impact fee ordinance that conflicts with RCW 82.02.050-.090 is improper. For the reasons stated above, the examiner respectfully disagrees. Pursuant to RZC

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<sup>1</sup> *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984): "[A]dministrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication."

21.76.060.I.4, the hearing examiner is required to accord substantial deference to the Director's decision in considering a Type I appeal.

Of note, Appellant's Counsel mischaracterizes the Director's testimony from the hearing in the reconsideration request, asserting that the Director "admitted" that fees based on 96 units overstate Vision 5's impacts. In the testimony quoted in the Request, Mr. Odle stated: "Based on 96 units, given using multi-family impact fees, would be overstating the impacts." *Request, page 4*. Given the context of the entire line of questioning, it is clear that Mr. Odle meant that because SROs are different from typical multi-family units with regard to transportation and park impacts and number of inhabitants per unit, as demonstrated by the Appellant's independent fee calculation study, to charge transportation and park impact fees based on 96 multi-family units would overstate the impacts. The City did not charge 96 multi-family unit impacts fees for transportation or parks. *Decision, findings 36 - 37, conclusion 4*.

3. On reconsideration, counsel repeats the argument offered at hearing that other definitions of dwelling unit apply, reasserting that: 1) according to the building code, only eight dwelling units exist and 2) according to the zoning code, 96 dwelling units would not be allowed.<sup>2</sup> This line of argument was fully addressed in the Decision. In order to calculate impact fees on a given project, one works from the impact ordinance in effect at the time of building permit application. Because the City's impact fee ordinance contains a definition of dwelling unit, the Director is not required, and arguably not allowed<sup>3</sup>, to refer to any other definition of dwelling unit. *Findings 24, 25, and 26; conclusion 3*.

4. Nothing in RCW 82.02.050-.090 requires a local decision maker to enter findings specifically addressing proportionality in a local government decision on an appeal from assessed impact fees. Nor does anything in the applicable Redmond zoning code appeal provisions require such findings or conclusions. *RZC 21.76.060.F; RZC 21.76.060.D.4; RZC 21.76.060.I.4*. However, several findings address the issue of the proportionality of the fees to the impacts of the SRO units. *Findings 25, 26, 28, 29, 30, 31, 32, 34, and 36; conclusion 4*.

Arguments not addressed are respectfully deemed unpersuasive.

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<sup>2</sup> As noted in the Decision, conclusion 3, page 15, the "exceeds zoning code density" argument fails because there is no maximum density for SROs in the Redmond Town Square Zone. *RZC 21.10.080, Table 21.10.080C*.

<sup>3</sup> As cited in the Decision: Where an ordinance defines specific terms within an ordinance, the definitions control the meaning of those terms. *HJS Development, Inc. v. Pierce County*, 148 Wn.2d 451, 472, 61 P.3d 1141 (2003). When a general and a specific ordinance cover the same subject matter, the specific controls over the general to the extent that the two conflict. *State ex rel. Lige & Wm. B. Dickson Co. v. Pierce County*, 65 Wn. App. 614, 620, 829 P.2d 217 (1992).

*Decision on Reconsideration*

The examiner declines to amend or add to the findings or conclusions. The August 6, 2013 Decision was supported by findings and conclusions based on the record as a whole, including all of Appellant's argument and evidence, and was within the proper scope of the hearing examiner's authority pursuant to Redmond Zoning Code 21.76.050.B, 21.76.050.F, 21.76.060.D.4, and 21.76.060.I.

Appellant's motion for reconsideration is respectfully denied.

Ordered August 31, 2013.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner

For the purposes of completing the record, the following items shall be included as attachments to this Decision on Reconsideration:

Appellant's August 19, 2013 request for Reconsideration  
Post-Hearing Order, dated August 20, 2013  
City Attorney's August 29, 2013 Response