

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

In the Matter of the Appeal of	)	NO. L100036
	)	
<b>Michael and Nicole Alex</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
Of an Administrative Decision.	)	
_____	)	

**SUMMARY OF DECISION**

The appeal of the January 23, 2010, decision of the City of Redmond Planning Department is **DENIED**.

**SUMMARY OF RECORD**

Procedural History:

Michael and Nicole Alex (Appellant) requested permission to place a shed within a greenbelt easement on their property, which is located at 15314 NE 66<sup>th</sup> Court in Redmond.

The City Planning Department denied the request in a letter dated January 23, 2010, and mailed the Appellant notice of the decision on January 26, 2010.

The Alexes appealed the decision on February 9, 2010. The appeal was timely based on the January 26, 2010, decision issuance date.

Hearing Date:

An open record hearing on the appeal was held before the Hearing Examiner of the City of Redmond on May 5, 2010.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

1. Thara Johnson, Associate Planner, City of Redmond
2. Michael Alex, Appellant

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

1. Staff Report dated April 12, 2010, with the following attachments:
  - A. Site & Surrounding Zoning Map
  - B. Redmond View Plat
  - C. Request to place shed in easement
  - D. Administrative Decision dated January 23, 2010

- E. Landscaped Greenbelt Easement
  - F. Findings and Decision of the Hearing Examiner for Redmond [View] Plat (includes Order and Amended Decision)
  - G. Notice of Public Hearing and Certification of Notice
  - H. Appeal Application Form filed February 9, 2010
2. City PowerPoint Presentation (seven slides on four pages)

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

### FINDINGS

1. The subject property is Lot 7 of the Redmond View Plat, which was recorded in 1996. *Exhibit 1, Attachment B; Exhibit 2, page 2.*
2. Lots 7, 8, 9, and 10 of Redmond View are encumbered by a 20-foot landscaped greenbelt easement, which the developer granted to the City of Redmond. The easement is measured from the western property line of the lots. *Exhibit 1, Attachments B and E.*
3. The landscaped greenbelt easement had been a condition of preliminary plat approval. The relevant condition stated, “The City shall draft and record and record an easement to create a landscape greenbelt for the west 20 feet of the Redmond Plat (Lots 7, 8, 9, and 10).” The purpose of the easement was to create a buffer from the properties to the west. *Exhibit 1, Attachment F (see Order and page 3 of Amended Decision).*
4. The landscaped greenbelt easement reads in relevant part as follows:

...The purpose of this easement is to preserve existing trees to provide a visual buffer to properties to the west....

Except for ordinary landscape maintenance, no tree-trimming, tree-topping, tree-cutting or tree removal, nor construction, clearing or alteration activities shall occur within the easement area without prior written approval from the City of Redmond. Application for such written approval is to be made to the Redmond Department of Planning and Community Development which may require inspection of the premises both before the issuance of the written approval and following completion of the activities....

This Easement shall be considered a covenant binding upon the parties hereto, their successors and assigns, and shall run with the land....

*Exhibit 1, Attachment E.*
5. The subject property is 7,704 square feet in area and is developed with a single-family residence. *Exhibit 1, page 2.*

6. The Comprehensive Plan designation of the subject property is Single-Family Urban, which allows residential development at a density of four to eight dwelling units per acre. The subject property is within the Grasslawn Neighborhood. *Exhibit 1, page 2.*
7. The subject property is zoned R-5, which allows residential development at a density of four dwelling units per acre. *Exhibit 1, page 2.*
8. Surrounding properties are zoned R-5 and are developed with single-family residences. *Exhibit 1, page 2; Exhibit 2, page 1.*
9. Sometime in 2009 the Appellant commenced construction of an 8' x 10' shed on his property. The shed is 12 feet from the western property line, representing an eight-foot encroachment into the landscaped greenbelt easement. Placement of the shed in that location did not require the removal of any trees. The Appellant was not aware of the landscaped greenbelt easement at the time of construction. The Appellant filed a request to keep the shed in the easement after the City received a report of violation. *Exhibit 1, Attachment C; Exhibit 2, pages 2 and 3; Testimony of Mr. Alex.*
10. The City of Redmond Planning Manager denied the request to allow the shed in the easement in a letter dated January 23, 2010. Notice of the decision was mailed to the Appellant on January 26, 2010. *Exhibit 1, page 4; Exhibit 1, Attachment D.* The Appellant filed an appeal of the decision on February 9, 2010. *Exhibit 1, Attachment H.*
11. Despite the irregular shape of the subject property and the extent the landscaped greenbelt easement, there are alternate locations on the subject property where a shed might be sited. However, the Appellant wants to avoid placing the shed in front of windows or in the center of the backyard. The shed could be placed in a different corner of the yard, but such location would require the removal of a tree. *Exhibit 1, Attachment C; Testimony of Mr. Alex.*
12. The Appellant argued that the proposed shed location is consistent with the easement because it does not require the removal of any vegetation. *Testimony of Mr. Alex.*
13. The City argued that allowing the shed would set a precedent by which it would be difficult to deny future requests, and that it would be inconsistent with the conditions of preliminary plat approval. The City does not want to relinquish the easement. *Testimony of Ms. Johnson; Exhibit 1, page 4.*
14. Notice of the appeal hearing was mailed to the Appellant on April 14, 2010, and displayed on the City's PEG Access Channel from April 14, 2010 to May 5, 2010. *Exhibit 1, Attachment G; Exhibit 1, page 3.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner has jurisdiction to hold an open record hearing and make a decision on appeals of Type 1 decisions pursuant to RCDG 20F.30.30-015, -060, and -070.

### Criteria for Review:

There are no criteria for deciding whether an individual should be allowed to place a structure within a City easement. The relevant easement language is as follows:

The purpose of this easement is to preserve existing trees to provide a visual buffer to properties to the west....

Except for ordinary landscape maintenance, no tree-trimming, tree-topping, tree-cutting or tree removal, nor construction, clearing or alteration activities shall occur within the easement area without prior written approval from the City of Redmond.

*Exhibit 1, Attachment E.*

Pursuant to RCDG 20F.30.30-070, the Hearing Examiner may grant the appeal or grant the appeal with modification if:

- (a) The appellant has carried the burden of proof; and
- (b) The Examiner finds that the Type 1 decision is not supported by a preponderance of the evidence.

The Hearing Examiner must accord “substantial weight” to the decision of the applicable department director. *RCDG 20F.30.30-070(2)*.

### Conclusions Based on Findings:

The Appellant has not met his burden of proof, for the following reasons:

- A. It is undisputed that the subject property is encumbered by the easement, and that the shed represents “construction” within the easement. *Findings 1, 2, and 9.*
- B. The purpose of the easement requirement was to create a buffer, and such purpose would not be served by the permanent placement of a shed, even if no trees were removed from the easement area. *Finding 3.*
- C. If the shed were allowed, it would be difficult to deny similar requests in the future. The end result would be, in effect, relinquishment of the easement, which would be contrary to the conditions of preliminary plat approval. *Findings 3 and 13.*

- D. The easement language grants the City discretion in this matter, and the City does not want a shed in the easement. The Appellant did not articulate any basis for entitlement or any criteria by which approval might be granted. The Appellant still has reasonable use of the property without the approval. *Findings 4, 11, and 13.*

Giving substantial weight to the decision of the Planning Department, the appeal must be denied.

### **DECISION**

Based on the preceding Findings and Conclusions, the appeal of the January 23, 2010, decision of the City of Redmond Planning Department is **DENIED**.

Dated May 12, 2010.

Toweill Rice Taylor LLC,  
Hearing Examiners for the City of Redmond  
By:

/s/  
LeAnna C. Toweill