

**MEMO TO:** City Council  
**FROM:** John Marchione, Mayor  
**DATE:** January 5, 2010

**QUASI-JUDICIAL**

**SUBJECT: COUNCIL’S ADOPTION OF FINDINGS ON APPEAL: LABLANC, MCKELHEER AND CARLSON’S APPEAL (AKA SAMM-RED) OF HEARING EXAMINER’S DECISIONS TO DENY APPEALS L090238, L090239 AND L090240 (L090450, L090452 AND L090453)**

**I. RECOMMENDED ACTION**

Adopt findings of fact and conclusions of law to support Council’s decision to approve appeals.

**II. DEPARTMENT CONTACT PERSONS**

Rob Odle, Director, Planning and Community Development, 425-556-2417  
Judd Black, Planning Manager, 425-556-2426  
Thara Johnson, Associate Planner, 425-556-2470

**III. DESCRIPTION/BACKGROUND**

The City Council voted to approve three appeals filed on the Notice of Decision issued on Samm-Red Estates. The appellants appealed the Hearing Examiner’s decision relating to NE 53<sup>rd</sup> Street constituting feasible access and contended that the basis for this finding was an error in law and was not supported by a preponderance of evidence.

The City Council held a closed record appeal hearing as provided for in the Redmond Community Development Guide, Section 20F.30.35-120(1)(d), since the open record appeal hearing was held by the Hearing Examiner. At this meeting the Council allowed each side (proponents and opponents) to speak for a maximum of ten minutes. No new evidence was presented by either speaker and testimony was limited to arguments based upon the Hearing Examiner’s record. The City Council approved the three appeals on December 1, 2009, and the Findings of Fact and Conclusions of Law demonstrating that “the Hearing Examiner’s decision is clearly erroneous” in support of this decision are being brought forward for approval.

**IV. IMPACT**

**Service Delivery:** Staff does not anticipate a significant impact in service delivery needs or fiscal impact as a result of the approval of this project.

**V. ALTERNATIVES**

- A. Approve City Council's Findings.** The City Council has recommended that the appeal of Samm-Red Estates short plat be approved based on the fact that the decision of the Hearing Examiner is not supported by a preponderance of the evidence. The approval of this recommendation will require that the project be redesigned with access to the short plat from East Lake Sammamish Parkway.
- B. Approve City Council's Findings with modifications.** The City Council may choose to approve findings of fact and conclusions of law, based on Council findings that alternate conditions would better implement adopted regulations. This action could result in a redesign of the project.
- C. Not approve Council's Findings.** The Council may choose to deny findings of fact and conclusions of law. In so doing, the City Council will need to develop alternate findings of fact and conclusions of law which support their decision.

**VI. TIME CONSTRAINTS**

The City must complete its appeal process within 90 days of the end of the appeal period. The appeal process deadline is January 24, 2010.

**VII. LIST OF ATTACHMENTS**

**Attachment A:** Findings of Fact and Conclusions of Law for Samm-Red Estates Appeal

/s/ \_\_\_\_\_  
Robert G. Odle, Planning Director

12/15/09 \_\_\_\_\_  
Date

Approved for Council Agenda: /s/ \_\_\_\_\_  
John Marchione, Mayor

12/28/09 \_\_\_\_\_  
Date

# ATTACHMENT A

## BEFORE THE REDMOND CITY COUNCIL

In the Matter of the Appeal of:	)	NOs. L090238; L090238; L090240
	)	L090450; L090452; L090453
	)	
<b>McKelheers, Carlsons,</b>	)	
<b>and LaBlancs</b>	)	
	)	<b>Samm-Red Estates Short Plat Appeal</b>
	)	
Of the Redmond Hearing Examiner's	)	FINDINGS, CONCLUSIONS, AND
Decision Approving the Samm-Red	)	DECISION OF CITY COUNCIL
Estates Short Plat, File No. L098038	)	
_____	)	

### SUMMARY OF DECISION

The appeals filed by Mike and Chris McKelheer, John and Karen Carlson, and James and Christy LeBlanc are **GRANTED** insofar as they relate to use of NE 53rd Street as access to the Samm-Red Estates short plat and the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration is overturned insofar as it approved that access. The short plat may not access public roads via the easement known as NE 53rd Street. Granting the appeal on the access issue renders the other issues in the appeal moot. The short plat is remanded to the Technical Committee for consideration of any necessary changes to the short plat and to the conditions of approval in order for the short plat to take access from East Lake Sammamish Parkway.

### FINDINGS

1. This matter came before the Redmond City Council on a closed record appeal of the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration. In that Order and Decision on Reconsideration, the Hearing Examiner reversed her previous Decision, rendered on September 14, 2009, in which she had held that a private easement known as NE 53rd Street could not be considered "feasible access" for the Samm-Red Estates short plat within the meaning of RCDG 20D.210.20-080 because fire apparatus access over the easement could not be assured. On reconsideration, the Hearing Examiner determined that access could be assured because of the Fire Department's authority to regulate NE 53rd as a fire apparatus access road under the International Fire Code.
2. The appellants, Mike and Chris McKelheer, John and Karen Carlson, and James and Christy LeBlanc, appealed the Hearing Examiner's Order and Decision on Reconsideration to the City Council by filing appeals on October 26, 2009.

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3. On December 1, 2009, the Redmond City Council heard oral arguments on the appeal. The appellants were represented by Earl Morris of Land Law, LLC. City staff was represented by Thara Johnson, Fire Marshal Robert Lovett, and David Almond. The applicant, Tony Chee, represented himself. No new evidence was submitted.
4. The City Council hereby adopts Findings 1-15 and 17-25 made by the Hearing Examiner in her October 12, 2009, Order and Decision on Reconsideration. The City Council expressly does not adopt Finding 16.
5. The City Council makes the following alternative findings in lieu of the Hearing Examiner's Finding 16:
  - A. The proposed 20-foot paved road width would satisfy the City's minimum emergency vehicle access standards for road width. In order for the road to satisfy the Redmond Fire Department's requirements for emergency vehicle access, no parking could be allowed along the length of NE 53rd Street. This requirement could be enforced by the Fire Department under Section 15.06.013(22) of the Redmond Municipal Code, which gives the Fire Chief the authority to enforce no parking requirements on emergency vehicle routes.
  - B. However, Redmond Municipal Code Section 15.06.012(20) requires that all portions of emergency vehicle access routes or areas that are not within a public right-of-way must be maintained in an approved and recorded Emergency Vehicle Access Easement. No such easement current exists and the applicant, Mr. Chee, does not have the ability to grant such an easement over the private NE 53rd Street. Any grant of an Emergency Vehicle Access Easement would have to come from the Appellants, who are the owners of the land underlying NE 53rd Street. The Appellants are unlikely to grant such an easement to the City given their opposition to the short plat using NE 53rd Street for access.
6. Any conclusion of law set forth below or adopted below from the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration that is more properly deemed to be a finding of fact is hereby adopted as such.

### CONCLUSIONS

1. The Redmond City Council has the authority to hear appeals from decisions of the Hearing Examiner on Type II permits, including short plats. RCDG 20F.30.35-120. The appeals in this matter were timely filed and the Council has jurisdiction to hear them.
2. Under RCDG 20F.30.35-120(1)(f)(v) and (g)(i), the City Council must uphold the decision of the Hearing Examiner unless the appellants prove that the decision was not supported by the preponderance of the evidence or was clearly erroneous. The City Council must accord the Hearing Examiner's decision substantial weight.

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3. The City Council hereby adopts Conclusions 1-9 and 12 in the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration. The Council expressly does not adopt Conclusion 10.
4. The Hearing Examiner's Conclusion 10 to the effect that NE 53rd Street is constitutes "feasible access" for the Samm-Red Estates short plat to 187th Avenue NE is not supported by the preponderance of the evidence and is clearly erroneous even when considered in light of the substantial weight the Council must give it. NE 53rd Street cannot be considered "feasible access" unless it meets City standards for emergency vehicle access. Section 15.06.013(20) of the Redmond Municipal Code clearly requires that all emergency vehicle access routes that are not within a public right-of-way must be maintained in an approved and recorded Emergency Vehicle Access Easement. No such easement exists at the present time and the clear indication from the evidence is that the Appellants would be unwilling to give such an easement to the City. Therefore, NE 53rd Street cannot meet the City's standards for an emergency vehicle access and NE 53rd Street is cannot be considered "feasible access" for the Samm-Red Estates short plat.
5. Since NE 53rd Street is not "feasible access," the Samm-Red Estates short plat will have to take access from East Lake Sammamish Parkway. This may require reconfiguration of the short plat and may require conditions in order to ensure that the access meets City standards and is safe. It is therefore appropriate to remand the short plat to the Technical Committee for consideration of any necessary changes to the short plat and to the conditions of approval in order for the short plat to take access from East Lake Sammamish Parkway.
6. The appellants raised a number of other issues in their appeals regarding the legal rights of the Samm-Red Estates short plat to use NE 53rd Street and the affect of the use of NE 53rd Street on wells in the vicinity. Because NE 53rd Street will not serve as access to the Samm-Red Estates short plat, the Council determines that these issues are moot and will not decide them.
7. Any finding of fact set forth above or adopted above from the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration that is more properly deemed a conclusion of law is hereby adopted as such.

### DECISION

For the reasons set forth above, the appeals are **GRANTED** insofar as they relate to use of NE 53rd Street as access to the Samm-Red Estates short plat and the Hearing Examiner's October 12, 2009, Order and Decision on Reconsideration is overturned insofar as it approved that access. The short plat may not access public roads via the easement known as NE 53rd Street. Granting the appeal on the access issue renders the other issues in the appeal moot. The short plat is remanded to the Technical Committee for consideration of any necessary changes to the short plat and to the conditions of approval in order for the short plat to take access from East Lake Sammamish Parkway.

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ADOPTED by the Redmond City Council at a regular meeting thereof this \_\_\_\_ day of \_\_\_\_\_, 2010.

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MAYOR JOHN MARCHIONE

ATTEST/AUTHENTICATED:

(SEAL)

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CITY CLERK MICHELLE MCGEHEE