

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

In the Matter of the Application of	)	NO. L100204
	)	
	)	
<b>Emerald Heights</b>	)	<b>Emerald Heights</b>
	)	<b>Development Guide Amendment</b>
	)	
For approval of a	)	DECISION
Development Guide Amendment	)	ON RECONSIDERATION
_____	)	

**Decision on Reconsideration**

The request for reconsideration is granted in part and denied in part.

**Background**

The above-captioned matter was heard by the Redmond Hearing Examiner on May 2, 2011. On May 16, 2011, findings, conclusions, and a recommendation for approval were issued (Recommendation) to the Redmond City Council.

On May 31, 2011, a request for reconsideration was timely filed by Don and Ellen Taves. The request consists of a nine page written memorandum, outlining the Taves' bases for reconsideration request, with eight attached pages of new exhibits. The request alleged errors with regard to: exclusion of testimony related to the fitness center project; alleged errors or omissions in Findings 4, 7, 8, 10, 14, 15, 16, 19, 22, and 22B; and alleged errors in Conclusions 1 and 2. The Taves requested the hearing be reconvened to supplement the record on the above items and/or that the Recommendation be reversed.

Through a Post-Hearing Order, issued June 1, 2011, the Examiner requested responses from the Applicant and City Staff. Both responses were timely submitted on June 8, 2011.

**Jurisdiction**

Requests for reconsideration of Hearing Examiner recommendations in Type IV applications are governed by Redmond Community Development Code (RCDG) 20F.30.45-100(6), which states:

Any party of record may file a written request with the Hearing Examiner for reconsideration within 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 14 days after the filing of the request for an appeal by either denying the request, issuing a revised decision, or calling for an additional public hearing.

## Discussion

1. Regarding the eight pages of documents attached to the nine-page request for reconsideration: Pursuant to the Redmond Hearing Examiner Rules of Procedure, evidence submitted after the public hearing will only be considered upon a showing of significant relevance and good cause for delay in its submission. *Redmond Community Development Guide (RCDG) Appendix 20F-2, Hearing Examiner Rules VI.F.5.* The "close of the record at adjournment" was explained at the outset of the public hearing. The reconsideration request does not show good cause for delay in submission of any new evidence. None of the attached documents are admitted in the record.<sup>1</sup> To the extent that the nine-page reconsideration request seeks to submit new factual evidence beyond that offered at hearing, such factual evidence is not admissible and should not be considered part of the record before the City Council or on further appeal.
2. Regarding the assertion that testimony about the fitness center project was improperly excluded from the record: The requested rezone, if approved, would not authorize any specific construction plan. It would allow for future applications for land development to be submitted and reviewed according to R-6 zoning standards rather than R-4 standards. The details of any proposed or ongoing alterations to existing buildings in Emerald Heights are not relevant to the inquiry of whether the Applicant has demonstrated compliance with the criteria for development guide amendment approval. The fact that Mrs. Taves' written comments on the subject were admitted (at Exhibit 3.18) does not change the relevance of the subject to the rezone inquiry. No error occurred when the testimony was excluded.
3. Contested Finding 4 states that "[t]he stream, slopes, and buffer for each required pursuant to the City's critical areas ordinance are set aside in a native growth protect easement (NGPE)." This is supported by information on page 5 of the Technical Committee report in the record at Exhibit 1. Contested Finding 14 refers to the stream and slope area of the site as being within a NGPE. However, as asserted by the Taves in the reconsideration request, the statements in the Technical Committee report about the existence of an NGPE are in error, as conceded by the City and stipulated by the Applicant in their June 8, 2011 responses. The stream, slopes, and associated buffers are protected by the City of Redmond critical areas ordinance, regardless of recorded easement. Findings 4 and 14 should be corrected.
4. Regarding other errors alleged in findings and conclusions<sup>2</sup>, the request for reconsideration fails to establish errors of fact or procedure. It is the Hearing Examiner's

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<sup>1</sup> One attached document, Mrs. Taves' April 24, 2011 email, is already in the record at Exhibit 3, Attachment 18.

<sup>2</sup> Other alleged errors include: Finding 7, relating to on-site occupancy in skilled nursing and assisted living units; Finding 8, relating to the waiting list; Finding 10, relating to creation of new impervious surfaces; Findings 14, 15, and 19, relating to whether approval of the rezone would result in an increase in the variety of available housing types; Findings 16 and 22B, relating to the adequacy of on-site parking; Finding 22, relating to its omission of the number and/or percentage of individuals opposing the rezone; Finding 22B, relating to the adequacy of evidence on the subject of market demand for more units; Conclusion 1, relating to the alleged failure to demonstrate changed circumstances sufficient to support a rezone; and Conclusion 2, relating to its alleged failure to consider impacts to Emerald Heights residents in the analysis of compatibility.

duty to review available information, maintain an accurate record of the proceedings, determine findings of fact from the record, and form conclusions in support of recommendations. The findings and conclusions as issued are based on all evidence properly admitted in the record as weighed according to the professional judgment of the fact finder. The Taves had an opportunity to present evidence to establish their view of the facts at hearing. Any arguments offered at hearing that were not addressed in the findings and conclusions were not concluded to be relevant to the determination of whether compliance with criteria for approval had been shown. No showing has been made that would merit reconvening the public hearing, and no other changes to the Recommendation (other than correcting Findings 4 and 14) are appropriate.

### **Order**

- 1) The following documents are added to the record of the above-captioned matter:
  - May 31, 2011 Request for Reconsideration (nine pages)
  - June 2, 2011 Post-Hearing Order
  - June 8, 2011 Response from the City
  - June 8, 2011 Response from the Applicant
  - June 14, 2011 Decision on Reconsideration

None of the documents attached to the May 31, 2011 reconsideration request are admitted. To the extent that the nine-page reconsideration request submits new factual evidence beyond that offered at hearing, such factual evidence is not admissible and should not be considered part of the record before the City Council or on further appeal.

- 2) Finding 4 is amended as follows:

4. In 1992, the subject property was developed with Emerald Heights, a CCRC owned and operated by Eastside Retirement Association. Existing site improvements include 401 dwellings, consisting of various independent living units and, in the existing Corwin Center, assisted living rooms and skilled nursing care rooms. Amenities also include a fitness center, auditorium, and other group facilities. Open areas of the site are vegetated with a combination of landscaping and retained mature trees. A Class III stream and steep slopes with grades greater than 40% occupy the western portion of the site. ~~The stream, slopes, and buffer for each required pursuant to the City's critical areas ordinance are set aside in a native growth protect easement (NGPE).~~ The existing retirement residential units are served by adequate public facilities and services including water, sewer, and stormwater. Private utilities, including phone, cable, and electricity, also serve the site. In addition to available public transportation to the site, the facility provides resident transportation services. The Emerald Heights community is well screened from adjoining land uses by landscaped buffers on all four sides of the property. Building heights and setbacks were chosen to ensure compatibility with neighboring properties. The screening is so effective that it is possible to drive by Emerald Heights and not know it is there. *Exhibit 1, pages 3, 5, 6; Exhibit 4a; Chambard Testimony.*

3) Finding 14 is amended as follows:

14. As depicted in the submitted conceptual plans, no development would be proposed ~~in the NGPE area~~ in the western portion of the property where the stream, slopes, and associated buffers are located. ~~All vegetation in the NGPE would be retained as is.~~ Any future development proposals would be reviewed for compliance with the City's tree retention requirements and for compliance with the critical areas ordinance regarding stream and steep slope setbacks and protection. *Exhibit 1, page 5; Johnson Testimony.*

4) No other changes are made to the May 16, 2011 Recommendation.

**ORDERED** June 14, 2011.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner