



## QUASI JUDICIAL

DATE: January 12, 2012

MEMO TO: Mayor, City Council, and Parties of Record

FROM: Office of the Hearing Examiner, 425-556-2191, [emadkisson@redmond.gov](mailto:emadkisson@redmond.gov)

SUBJECT: **SAMM-RED ESTATES APPEAL – L110371**

Enclosed is a copy of the Hearing Examiner's Decision on the Samm-Red Estates Appeal (L110371). Pursuant to the Redmond Zoning Code (RZC) 21.76.060(I)(5), Request for Reconsideration, any party to the appeal who participated in the hearing may file a written request with the Hearing Examiner for reconsideration within 14 calendar 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 reconsideration by either denying the request or issuing a revised decision. Reconsideration requests must be received by the Office of the Hearing Examiner of the City of Redmond, and can be submitted by mail, email, personal delivery or by fax, prior to **5:00 p.m., on January 26, 2012.**

### City of Redmond Office of the Hearing Examiner Contact Information:

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For your convenience, Request for Reconsideration forms are available at City Hall-3<sup>rd</sup> Floor, and online: <http://www.redmond.gov/Government/HearingExaminer/RequestforReconsideration/>.

### APPEAL TO THE REDMOND CITY COUNCIL

You are hereby notified that the attached Findings, Conclusions, and Decision are the final action on this Appeal of a Type II Administrative Decision subject to the right of appeal to the Redmond City Council. **Appeal procedures are governed by RZC 21.76.060(M)**, to which the reader is referred for detailed instructions. The **written appeal** and the appeal fee, if any, **must be received by the Redmond Development Services Center no later than 5:00 p.m. on (DATE)**, or within 14 days following final action by the Hearing Examiner if a Request for Reconsideration is filed. Please include the application number on any correspondence regarding this case.

### FURTHER PROCEEDINGS

This matter has been labeled "quasi-judicial" to alert City Council members and the public that it is subject to strict procedural requirements under the laws of the State of Washington. These requirements are intended to ensure that the process is fair in fact and that it appears to be fair.

The principal procedural requirement is that the Hearing Examiner and the City Council members, who participate in making the decision, must not discuss the matter with any interested party outside of the public hearing and public meeting process. This ensures that all interested persons have equal access to information that may influence the decision.

Members who participate in making a decision on a quasi-judicial matter must also be careful that they do not have any financial, employment, ownership or other interest which would be likely to influence their decision, or which would reasonably appear to do so.

Please assist your public officials in their efforts to adhere to Washington State's Appearance of Fairness Doctrine. Make your views known by attending public hearings and/or submitting your comments in writing through the Planning Department. Do not contact the decision-making officials directly.

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

|                                      |   |                                       |
|--------------------------------------|---|---------------------------------------|
| In the Matter of the Appeal of       | ) | NO. L110371                           |
|                                      | ) |                                       |
| <b>James and Christina LaBlanc</b>   | ) | <b>LaBlanc Appeal of the Samm-Red</b> |
|                                      | ) | <b>Estates Short Plat</b>             |
|                                      | ) |                                       |
| of an August 18, 2011 notice of      | ) |                                       |
| decision approving the short plat of | ) | FINDINGS, CONCLUSIONS, AND            |
| Samm-Red Estates (L080398)           | ) | DECISION                              |
| _____                                | ) |                                       |

**SUMMARY OF DECISION**

The Appellant did not satisfy the burden of proof demonstrating that the City's short plat approval was erroneous. The appeal must be **DENIED**.

**SUMMARY OF RECORD**

Request:

On August 18, 2011, the City's Technical Committee approved the Samm-Red Estates Short Plat (L080398) with conditions. The short plat subdivides the two-acre subject property in the R-4 zone into single-family residential eight lots. On September 1, 2011, James and Christy LaBlanc timely appealed the City's short plat approval.

Hearing Date:

The City of Redmond Hearing Examiner conducted an open record appeal hearing on November 16, 2011. At the conclusion of the hearing, the record was left open for comments by both parties on materials submitted at hearing. Consistent with the November 17, 2011 post-hearing order, the Appellant's final response due December 21, 2011. The response was timely submitted and the record closed on that date.

Testimony:

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

*For Appellants:*

James LaBlanc, Appellant

*For the City:*

Thara Johnson, City of Redmond Associate Planner  
Judd Black, City of Redmond Planning Review Manager

*For the Applicant:*

Dwight Holobaugh, Licensed Civil Engineer, Applicant Representative

Exhibits:

At hearing, the following exhibits were offered in evidence:

1. Technical Committee Report to the Hearing Examiner, dated November 16, 2011, with the following attachments:
  - A: Site & Surrounding Zoning
  - B: Site Plan Set
  - C: City Council's Findings and Conclusions on Samm-Red Appeal
  - D: Notice of Decision
  - E: Appeal Application Forms
  - F: Notice of Appeal Hearing
  - G: Documentation from City of Redmond's Attorney
2. Appellant's written comments on appeal
3. Selected RCW citations, submitted by James LaBlanc
4. Email exchange between Bob Franklin and the Appellants, dated May 29, 2009
5. Email exchange between Bob Franklin and the Appellants, dated May 29, 2009, time stamped 9:27 am
6. McBride correspondence to Appellants, dated October 19, 2005
7. Screenshot from King County Health Department Drinking Water Program, submitted by James LaBlanc
8. King County Health Code Chapter 12.24, submitted by James LaBlanc
9. Redmond Hearing Examiner Decision, No. L080398, September 14, 2009
10. Appellant Request for Reconsideration of 9/14/09 decision, undated
11. King County DDES Regulatory Review Committee Meeting Minutes, January 24, 2008, submitted by James LaBlanc
12. Redmond Planning Staff PowerPoint presentation slides
13. Memorandum from Thara Johnson, dated November 23, 2011, in response to the Post Hearing Order

14. Applicant's comments in response to the Post Hearing Order, with attached plat map marked by Applicants depicting the approximate location of Appellants' well
15. Appellants' final comments in response to the Post Hearing Order, dated December 21, 2011
16. Complete plan set for Samm-Red Estates, offered by Applicant, final date April 25, 2011 (30 Sheets)

The November 17, 2011 Post-Hearing Order Setting Submission Schedule is also included in the record of this appeal.

Issues on Appeal:

Appellants allege the following errors in the August 18, 2011 short plat approval:

1. It was error for the Technical Committee not to consider and comply with King County Health Code Titles 12 and 13, by allowing the proposed cul-de-sac, sewer line, and electric/gas utility easement to be placed within 100 feet of the Appellants' well.
2. It was error for the Technical Committee to approve the short plat because it does not comply with Washington Administrative Code (WAC) 173-160, WAC 246-291, Revised Code of Washington (RCW) 18.104, and King County Health Code Titles 12 and 13.
3. The City must require the developer to obtain approval from the King County Board of Health for the proposed short plat prior to the City's decision on the application for short plat.
4. The Redmond Municipal Code must be updated to incorporate or comply with State and County law pertaining to wellhead protection, specifically King County Health Code Titles 12 and 13.

Upon consideration of the argument, testimony, and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

## FINDINGS

### *Procedural Background*

1. The application for the Samm-Red Estates short plat<sup>1</sup> satisfied the City's requirements for completeness on October 20, 2008. Notice of the complete application was distributed to surrounding property owners consistent with the notice requirements of the code provisions in effect at the time. Two neighborhood meetings were held: January 16, 2008 and May 11, 2009. The Technical Committee issued its notice of decision approving the

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<sup>1</sup> By statute, a short subdivision is the land division, and a short plat is the site plan or map of the short subdivision. *RCW 58.17.020*. In this decision, short subdivision and short plat are used interchangeably and mean the same thing.

short plat on June 8, 2009. The approval was timely appealed on June 22, 2009 by the instant Appellants and two other property owners. One issue raised by Appellants La Blanc in the 2009 appeal proceedings was whether the short plat approval violated King County Board of Health Code Titles 12 and 13, due to placing road and utility infrastructure within 100 feet of their private well on the parcel adjacent to the subject property. *Exhibit 12; Exhibit 9.*

2. The June 2009 appeal was finally decided by the Redmond City Council on January 5, 2010, which body granted the appeal. The effect of the Council's decision was that the short plat was prohibited from taking access via an existing private access easement known as NE 53rd Street. In so concluding, the Council declined to decide the LaBlancs' contention that approval of the short plat violated the King County Health Code, concluding the issue was moot since no access via NE 53rd was allowed. *Exhibit 12; Exhibit 1, Attachment C.* In their statement filed in the instant appeal, Appellants object to the conclusion of mootness; however, the January 2010 Council decision is final and no longer appealable. *Exhibit 1, Attachments C and E.*
3. Following the City Council decision, the Applicant redesigned the short plat to take access by East-Lake Sammamish Parkway. Other changes included revisions to the project's tree retention/preservation plan. The revised proposal was reviewed for compliance with the City's short plat criteria in the Redmond Community Development Guide (RCDG) under which the application vested. The Technical Committee approved the short plat on August 18, 2011 with conditions designed to ensure compliance with all applicable development standards and regulations. *Exhibit 12; Exhibit 16; Exhibit 1, Attachment D; Johnson Testimony.*
4. Appellants timely appealed the short plat approval. *Exhibit 1, Attachment E.*

#### *Site and Project Description*

5. The two-acre subject property is roughly triangular in shape, abutting East Lake Sammamish Parkway NE north of Lake Sammamish.<sup>2</sup> The site has an R-4 zoning designation and a Single-Family Urban land use designation pursuant to the City of Redmond Comprehensive Plan. The Single-Family Urban designation allows four to eight units per acre. To the east and south, adjacent parcels share the site's R-4 zoning. Parcels to the north are zoned R-8. The parkway is roughly to the west. In its pre-project condition, the site contains a single-family residence and appurtenances. Topography consists of gentle to moderate slopes, with the steeper areas along the parkway. *Exhibit 1, page 2; Exhibit 16, Sheet C-02.*
6. The approved short plat would subdivide two acres into eight single-family residential lots and four tracts, three for roadway improvements and one for utilities. The proposal was reviewed for compliance with zoning development standards, critical areas and tree

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<sup>2</sup> The legal description of the subject property is a portion of Section 18, Township 25 North, Range 6 East, W.M., also identified as Tax Parcel Number 182506-9049. *Exhibit 1, page 2; Exhibit 16, Sheet C-03, Site Plan.*

protection requirements, noise standards, arterial street standards, neighborhood policies of the Southeast Redmond Neighborhood, the City's stormwater and traffic standards, and all other applicable City of Redmond short plat approval criteria. The Technical Committee approved the short plat with conditions. *Exhibit 1, Attachment D; Johnson Testimony.*

*Issues on Appeal*

7. Appellants own Tax Parcel 1825069053, abutting the southeast boundary of the subject property. Their residence is served by a private well and on-site septic. The well is in the northernmost corner of their lot. The approved short plat's roadway and sewer lines would be installed within 100 feet of the Appellants' well. *Exhibit 16, Sheets C-12 ("Well House") and S-01; Exhibit 14; LaBlanc Testimony.*
8. Appellants argue that approval of the short plat with its roadway, sewer line, and other utility improvements within 100 feet of their private well violates King County Board of Health Code Titles 12 and 13, Washington Administrative Code (WAC) 173-160, WAC 246-291, and Revised Code of Washington (RCW) 18.104. They contend that approval of the plat thus violates RCW 58.17.110, by failing to promote public health and failing to facilitate adequate provision for public water. *LaBlanc Testimony; Exhibit 2.*
9. With regard to KCBOH Title 12, Appellants specifically contend that the source protection setbacks established in section 12.24.010 apply to their well. With regard to KCBOH Title 13, Appellants contend that 13.04.070 applies to their well because it provides water to their on-site septic system. *Exhibit 2; LaBlanc Testimony; Exhibit 15.*
10. Appellants argue that because the City's short plat criteria do not require King County Board of Health review, the City must review the short plat application for compliance with the City's preliminary plat criteria, which do require Board of Health review, because of the potential to impact his adjacent well. *LaBlanc Testimony; Exhibit 2.*
11. Appellants contend that Redmond's codes must be updated to comply with State and County law pertaining to wellhead protection, specifically by incorporating compliance with King County Board of Health Code Titles 12 and 13. The Appellants assert: "Since the city does not review or have criteria to review the public health of the surrounding residents as required by RCW 58-17-110, this [short] plat cannot be approved." *LaBlanc Testimony; Exhibit 2; Exhibit 15.*
12. Over the course of the instant plat's development, the Applicant offered to connect the Appellants' property to municipal water as part of project construction at no cost to the Appellants. In a counter offer, the Appellants requested additional compensation to help defray the costs of monthly water and sewer fees, in addition to other terms. The Applicant's offer was rescinded. *Exhibit 14; Exhibit 15.*
13. There is no protective easement recorded for a sanitary control radius around the Appellants' well. *Exhibit 15.*

14. There are three existing septic drainfields within approximately 100 feet of the Appellants' well: one on the subject property, one on the Appellants' property, and one on the lot north of the Appellants' property. *Exhibit 14; Exhibit 15*. Regarding the history of the well and how it came to be surrounded by drainfields, the Appellants offered the following statement:

The well was approved by the County health department in 1967. The previous owner the Late Mr. Rood told me that himself. The previous owners of the applicant's property sold my land to the Roods in 1967. The well was drilled with both the existing land owner's knowledge and approval from the County to all standards in force at the time. It was not drilled for irrigation purposes only as contended by the applicant. It was and always has been a potable water source to the residence at 18615 NE 53<sup>rd</sup> St. Yes there are drain fields within the existing required set backs as required by Title 12. These however, were in compliance in 1967 when the well was drilled. The first drain field on the Applicant's property was installed in approx 1963. The second on the upland property was installed in approx 1965. Since the well in question was drilled in 1967 with the knowledge of all three existing land owners and approval by the county, there is no remedy required. The KCBOH has no existing enforcement issue since all the existing systems were reviewed and approved by them in 1963, 1965, and 1967 respectively. I could not have obtained protective easements in 1967 since I wasn't born yet. Further Mr. Rood did not obtain protective easements at the time because they were not required or even recommended in 1967. None of this is relevant, what is relevant is that the city review and comply with all existing laws, not the ones that have been superseded or updated over the last 44 years.

*Exhibit 15.*

15. Since the initial 2009 hearing on the short plat, the City has updated its zoning code. The new Redmond Zoning Code (RZC) was adopted April 16, 2011. It does not incorporate review by the County Health Department into short plat approval criteria. *Johnson Testimony; Black Testimony*.
16. In response to the appeal, Planning Staff submitted that, in Staff's view, the issues are whether (a) the City is the entity who enforces KCBOH Titles 12 and 13; and (b) whether the City can require a private property owner on whose property the well is not located and whose property is not encumbered by a well protection easement, to comply with regulations of the KCBOH that the City has no authority to enforce. To both questions, Staff posits the answer is no, arguing that "the state laws that set up the Health Department vest enforcement authority to enforce local health regulations in the Local Health Officer designated by the Health Department, not the City as referenced in RCW 70.05.070(1). Additionally, the City is not granted any authority to enforcement by the statute or by the Health Department regulations themselves." *Exhibit 13; Exhibit 1, Attachment G*.

17. Planning Staff submitted that the Technical Committee's August 18, 2011 Notice of Decision complies with all applicable regulations under the City's Community Development Guide and the Redmond Municipal Code and is in compliance with the state subdivision law. *Johnson Testimony; Exhibit 13; Exhibit 1, page 5.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner is authorized to conduct open record appeal hearings and issue decisions on appeals from Type II permit decisions, including short plats, pursuant to Redmond Zoning Code 21.76.050.C, 21.76.050.G.1, and 21.76.060.E.4.<sup>3</sup>

### Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, within 21 days after the close of the record for the Type II appeal, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner shall accord substantial weight to the decision of the Technical Committee. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type II decision is not supported by a preponderance of the evidence or was clearly erroneous.

### Short Plat Criteria for Approval:

RCDG 20D.180.10-020 Review and Approval Criteria.

1. Each proposed subdivision or short subdivision shall be reviewed to insure that:
  - a. The proposal conforms to the goals, policies and plans set forth in RCDG Title 20B;
  - b. The proposal conforms to the site requirements set forth in RCDG 20C.30.25-140, Site Requirements;
  - c. The proposal conforms to the requirements of this section and those set forth in RCDG Title 20F and submittal requirements on file in the Planning Department;
  - d. The proposed street system conforms to the City of Redmond Arterial Street Plan and Neighborhood Street Plans, and is laid out in such a manner as to provide for the safe, orderly and efficient circulation of traffic;
  - e. The proposed subdivision or short subdivision will be adequately served with City approved water and sewer, and other utilities appropriate to the nature of the subdivision or short subdivision;

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<sup>3</sup> The short plat application vested in 2008 and was properly reviewed by Planning Staff for compliance with the regulations from the Redmond Community Development Guide (RCDG) in effect at the time. The appeal was filed September 1, 2011, after adoption of the city's new Redmond Zoning Code, and is properly reviewed and decided pursuant to RZC appeal criteria. The Technical Committee report to the Examiner in the record at Exhibit 1 reviewed the appeal against the RCDG criteria; however this does not pose an evidentiary or procedural error, as the RCDG and RZC procedures for reviewing appeals of short plat decisions are substantially similar. Pursuant to RCDG 20F.30.35-110, the Hearing Examiner may grant the appeal or grant the appeal with modification if: 1) the appellant has carried the burden of proof; and 2) the examiner finds that the Type II decision is not supported by a preponderance of the evidence. The RCDG required the examiner to accord substantial weight to the decision of the Technical Committee.



- f. The layout of lots, and their size and dimensions take into account topography and vegetation on the site in order that buildings may be reasonably sited, and that the least disruption of the site, topography and vegetation will result from development of the lots;
  - g. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected.
2. Lack of compliance with the criteria set forth in subsection (1) of this section shall be grounds for denial of a proposed subdivision or short subdivision, or for the issuance of conditions necessary to more fully satisfy the criteria.

RCDG 20F.40.150-040 Short Plat.

- 1. Criteria. As a basis for approval, approval with conditions or denial of a short subdivision, the Technical Committee shall determine if appropriate provisions have been made for, but not limited to the purpose and criteria set forth in Chapter 20D.180 RCDG, Subdivision and Short Subdivision Regulations.
- 2. Decision by the Technical Committee. Each final decision of the Technical Committee shall be in writing and shall include findings and conclusions based on the record to support the decision. The decision made by the Technical Committee shall be given the effect of an administrative decision and may be appealed in compliance with RCDG 20F.30.60, Public Hearings and Appeals.
- 3. Effect of Short Subdivision Approval. Approval of the short subdivision shall constitute authorization of the applicant to develop the short subdivision facilities and improvements in strict accordance with the plans and specifications as approved by the Public Works Department subject to any conditions imposed by the Technical Committee.
- 4. Recording. All short subdivisions shall be filed in compliance with the following:
  - a. Recording Required. No short subdivision shall be filed unless approved by the Technical Committee and City Engineer. A copy of an approved short subdivision shall be filed for record with the King County Department of Records and Elections and one reproducible copy shall be furnished to the City Engineer.
  - b. Fees and Recording Procedure. Prior to recording, the applicant shall submit the original short subdivision drawings to the Public Works Engineering Department for signatures.
- 5. Short Subdivisions – Restrictions. The area included in an approved and recorded short subdivision shall not be further divided within a period of five years from the date of final approval without meeting the requirements for a subdivision (RCDG 20F.40.150-050). Except that when the short plat contains fewer than nine parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of nine lots within the original short plat boundaries.

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## Other Cited Codes and Laws

### *King County Board of Health Code Title 12*

*12.04.010 Title.* The rules and regulations codified in this title shall be known as the "King County Public Water System Rules and Regulations" and may be so cited, and is referred to herein as "this title."

*12.04.030 Statutory authority - Scope.* ...The provisions of this title shall apply to the design, installation, alteration, addition, repair, replacement, maintenance and use of all group A... public water systems serving zero (0) through two hundred ninety-nine (299) nonresidents and group B public water systems serving two (2) through nine (9) permanent connections .... (emphasis added)

*12.08.170 A. Public water system.* "Public water system" means any water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission, and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single-family residence. (emphasis added)

### *King County Board of Health Code Title 13*

*13.04.010 Short title.* These rules and regulations shall be known as the "Board of Health On-site Sewage Regulations" and may be so cited, and are referred to herein as "this title."

*13.04.030 Scope.* The provisions of this title shall apply to the location, design, installation, alteration, addition, repair, relocation, replacement, maintenance, monitoring and use of all on-site sewage systems (OSS) except as specifically otherwise provided in this title. (emphasis added)

*13.04.070 Domestic water supply source.* No on-site sewage system may be constructed or expanded if the plumbing fixtures draining to the system are not supplied with water from an approved source. An approved water source consists of one of the following: A. Public water source: A public water source currently in compliance with chapter 246-290 or 246-291 WAC and BOH Title 12. B. Private individual well source: A private well on a lot five acres or greater in size or a lot created prior to May 18, 1972, which complies with all of the following conditions: ... (emphasis added)

*Washington Administrative Code*

*WAC 246-290-020 Applicability. (1)* Public water system shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm.

*WAC 173-160-010 What is the purpose of this regulation? (1)* These regulations are adopted under Chapter 18.104 RCW, to establish minimum standards for the construction and decommissioning of all wells in the state of Washington.

*Revised Code of Washington*

*RCW 18.104.010 Purpose.* The legislature declares that the drilling, making or constructing of wells within the state is a business and activity of vital interest to the public. In order to protect the public health, welfare, and safety of the people it is necessary that provision be made for the regulation and licensing of well contractors and operators and for the regulation of well design and construction.

*RCW 58.17.020 Definitions*

(1) "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section.

(2) "Plat" is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

(5) "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

(6) "Short subdivision" is the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. However, the legislative authority of any city or town may by local ordinance increase the number of lots, tracts, or parcels to be regulated as short subdivisions to a maximum of nine. ... (emphasis added)

(8) "Short plat" is the map or representation of a short subdivision.

*RCW 58.17.060 Short plats and short subdivisions — Summary approval — Regulations — Requirements.* (1) The legislative body of a city... shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions .... Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions ... (emphasis added)

*RCW 58.17.150 Recommendations of certain agencies to accompany plats submitted for final approval.* Each preliminary plat submitted for final approval of the legislative body shall be accompanied by the following agencies' recommendations for approval or disapproval: (1) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply; (2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication; (3) City, town or county engineer.

Conclusions Based on Findings:

1. The Appellants neither contend nor demonstrate that the Technical Committee's August 18, 2011 short plat approval violates any provision of the applicable Redmond development code pertaining to short plats. Rather, Appellants argue that the approved short plat fails to comply with County and State provisions and also that the Redmond code itself fails to comply with County and State provisions. *Findings 7, 8, 9, 10, and 11.*
2. Nothing in the applicable RCDG criteria references Titles 12 and/or 13 of the King County Board of Health Code, nor the King County Board of Health Code as a whole. *RCDG 20D.180.10-020; RCDG 20F40.150-040.* Arguably, State provisions relating to subdivisions require consultation and review by the local health department. *RCW 58.17.150.* However, the State legislature created a summary process for review of short subdivisions, clearly distinguishing between the two types of land development. The statute expressly allows local governments to establish different approval criteria for short subdivisions than are required for subdivisions. *RCW 58.17.020; RCW 58.17.060.*
3. Appellants have not shown any authority that allows, much less requires, the Technical Committee to look outside the provisions of the applicable Redmond code in deciding the instant short plat. Appellants have not shown that the City code, County Code, or State provision authorize the City to enforce the King County Board of Health Code. Acting in its quasi-judicial capacity (rendering administrative decisions with some level of discretion), the Technical Committee is a "creature of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Chaussee v. Snohomish County Council, 38 Wn. App. 630, 636 (1984).*
4. Appellants offered no evidence demonstrating that placement of a new roadway, designed in accordance with applicable City road and drainage standards, and/or placement of a new sewer line, built in accordance with applicable utility and engineering standards, would harm their water supply. *Findings 1 through 17.*
5. The Appellants' challenges to the adequacy of the applicable ordinances is untimely and made in the wrong forum. Neither the Technical Committee as decision maker nor the Hearing Examiner as appellate reviewer has authority to hear challenges to the adequacy

of the code applied in the case. Both are "creatures of the legislature", as described above. Such challenges must be made through appropriate processes to the City Council. More to the point, all City decision making bodies are required to apply the subdivision regulations in effect at the time of complete application (time of vesting). *RCW 58.17.033.*<sup>4</sup>

### DECISION

Based on the foregoing findings and conclusions, the appeal is **DENIED**. The Appellants have not satisfied the burden of proof to show that the short plat fails to satisfy any applicable codes or regulations. The City's August 18, 2011 conditional approval of the Samm-Red Estates Short Plat File No. L080398 is affirmed.

**Decided** January 11, 2012.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner

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<sup>4</sup> *RCW 58.17.033 Proposed division of land — Consideration of application for preliminary plat or short plat approval — Requirements defined by local ordinance. (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official. (2) The requirements for a fully completed application shall be defined by local ordinance.(3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. (emphasis added)*