

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

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|--------------------------------------|---|------------------------------|
| In the Matter of the Appeal of |) | No. APL LAND-_____ |
| |) | |
| Rory and Donna Veal |) | |
| |) | |
| Of the October 17, 2019 |) | |
| Administrative Decision file number |) | RULING ON APPELLANTS’ |
| LAND-2019-00814 regarding their Real |) | MOTION FOR PARTIAL |
| Property known as |) | SUMMARY JUDGMENT |
| <u>Tax Parcel Number 352605-9123</u> |) | |

Consistent with the January 8, 2020 pre-hearing scheduling order in the above-captioned appeal, on January 10, 2020 Appellants Rory and Donna Veal timely submitted a motion for partial summary judgment, requesting pre-hearing disposition of what they characterized as two purely legal questions:

- 1) Whether a watercourse is excluded from regulation as a Class IV stream if the naturally occurring water was insufficient to create a bed and bank, even if the watercourse conveys some naturally occurring water? and
- 2) Whether unintentionally artificial watercourses are excluded from regulation as Class IV streams?

The City time responded consistent with the scheduling order.

The following items were reviewed and considered in deliberating on the motion for partial summary judgment:

- Appellants’ Motion for Partial Summary Judgment, January 10, 2020
- Declaration of Jenna Mandell-Rice, January 10, 2020, with the following attachments:
 - Washington State Office of Community Development “Example Code Provision for Designating and Protecting Critical Areas”
 - Redmond Planning Commission Meeting Minutes excerpt, January 19, 2005
 - Emily Flanagan memorandum, May 8, 2018
 - Appellants’ Request for Administrative Interpretation, August 19, 2019

- Redmond Planning and Community Development Staff Report addressing Veal Administrative Interpretation request, October 17, 2019
- Herrera Environmental Consultants Technical Memorandum [re: Appellants' property], October 17, 2019
- City of Redmond "Stormwater Utility" webpage as of January 10, 2020
- City's Opposition to Appellants' Motion, January 17, 2020

Ruling

Pursuant to RZC 21.76.060.I(4), the scope of the examiner's authority in the underlying appeal of the Type I administrative decision is limited to a determination of whether the decision is or is not supported by a preponderance of the evidence or was clearly erroneous. In reaching this determination, the examiner acts in a purely appellate capacity and is required to accord deference to the Director's decision.

Under the City's critical areas ordinance, watercourses are not classified in the abstract; they are classified following review of site specific evidence. Neither was the watercourse on Appellants' property reviewed by the City in the abstract. Without weighing the competing evidence in the technical reports underlying the Director's administrative interpretation, the Appellants' two questions can be most accurately characterized a request for the examiner's advisory opinion on purely academic questions, which she lacks jurisdiction to give.

Because determining whether the City properly classified the watercourse on the subject property is necessarily a mixed question of fact and law, and because material facts are in dispute, summary judgment is not proper and is not granted.

A full hearing on the merits will proceed as scheduled.

Ordered January 22, 2020.

By:



Sharon A. Rice
Redmond Hearing Examiner