

**APPEAL (LAND-2016-02140)  
OF DENIAL FOR RECONSTRUCTION PERMIT  
PLANNING DEPARTMENT REPORT TO HEARING EXAMINER**

MEMO TO:           **Gary McLean, Pro-Tem Hearing Examiner**

FROM:                Planning Department

DATE:                December 26, 2016

PREPARED BY:      Sarah Pyle, Senior Planner (425) 556-2426

SUBJECT:            **ADMINISTRATIVE APPEAL OF DENIAL TO PERMIT A  
RECONSTRUCTION BUILDING PERMIT FOR A PORTION OF A  
UNPERMITTED BUILDING DESTROYED IN FIRE.**

REQUEST:            The appellant is appealing the denial to allow issuance of a building permit for reconstruction of a portion of a commercial building that had been destroyed in a fire. The appellant requests that the structure be classified as legal non-confirming and a permit for reconstruction be allowed to be issued.

HEARING DATE:     **February 15<sup>th</sup>, 2017**

**ATTACHMENTS**

EXHIBIT A:         King County Parcel Data  
EXHIBIT B:         Application for Appeal  
EXHIBIT C:         Notice of Appeal Hearing  
EXHIBIT D:         Redmond Response  
EXHIBIT E:         Property Map with Measurements  
**EXHIBIT F:         Building Permit 1971**

## BACKGROUND

**Appellant** Larry Hooper  
10702 158<sup>th</sup> Ct NE  
Redmond WA 98052

**Project**

**Applicant:** Larry Hooper  
10702 158<sup>th</sup> Ct NE  
Redmond WA 98052

**Pre-Application Date:**

**Appeal Filed:** November 29<sup>th</sup>, 2016

**Hearing Date:** January 18<sup>th</sup>, 2017

**Location:** 14609 NE 91<sup>st</sup> Street

**Parcel Size:** The total area of the site is approximately 23,000 square feet.

**Neighborhood:** The proposed project is within the Willows/ Rosehill neighborhood as identified within the Comprehensive Plan.

**Land Use Designation:** This property is within the Willows/ Rosehill Neighborhood and in the MP zone which is to provide locations for existing and future manufacturing and industrial uses. These goals are further defined in the Comprehensive Plan Policy LU-62.

**Zoning Designation:** The subject site is zoned Manufacturing Park (MP).

**Surrounding Land Use and Zoning:**

	<u>Zoning</u>	<u>Land Uses</u>
North:	MP	Manufacturing
East:	MP	Manufacturing
South:	MP	Manufacturing
West:	MP	Manufacturing

**Access:** Vehicle access for this site is gained from NE 91<sup>st</sup> Street

**SEPA:** N/A

**NOTICE OF DECISION:** Not issued for project.

### **JURISDICTION**

In accordance with RZC Section 21.76.060(I), Appeal of Type II Decisions, the appellant is required to specify the basis of their appeal. An appeal must be based on an error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the public hearing or consideration of approval. The appellant must provide: 1) facts demonstrating that they were adversely affected by the decision, 2) a concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria, 3) the specific relief requested, and 4) any other information reasonably necessary to make a decision on the appeal.

### **APPELLANT'S BASIS FOR APPEAL**

The appellant has appealed the Denial of the Extension Request for Resubmittal based upon the following assertions:

- 1.) The City has lost the permit or approvals for the structure.**
- 2.) The City has completed fire inspections annually and never contacted or informed the owner of the structure being illegal**
- 3.) The building was located too close to City Hall for any portion to have been constructed without permits.**

### **RELIEF SOUGHT BY APPEAL**

The appellant is seeking the following relief through this appeal:

- 1) To have structure destroyed by fire classified as legal non-conformance.

## ANALYSIS of BASIS for APPEAL

The following is the criteria for applying for appeal as outlined in RZC 21.76.060I.2. Staff has provided an outline below of the appeal application questions that must be responded to in full by the appellant as well as, an analysis of how the criteria for application/ appellant responses has or has not been properly met.

**Per RZC 21.76.060I.2.:** Commencing an Appeal

**(a) Who May Appeal. Any party of record may appeal the decision.** The applicant has appealed the denial of the request for extension.

**(b) Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth the following:**

**1. Facts demonstrating that the person is adversely affected by the decision;**

- *Response (by applicant) to question 1 of section B of the Application for Appeal:* On May 6<sup>th</sup>, 2016 part of my commercial building was destroyed by fire. The City of Redmond has denied a reconstruction permit. Since the fire we have suffered a significant loss of income. Over 20% of our warehouse was destroyed
  - This is not a finding of fact. The appellant has not provided in-detail how the 20% loss is associated with the current request for reconstruction, timeline or association with the structure. The response provided by the appellant is incomplete.

Specific facts and/ or findings were not provided as part of the appeal request. Due to this staff respectfully requests that the Hearing Examiner dismiss the Appeal Hearing and request.

**2. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;**

The letter, attached to the appeal application, was provided and contains the basis of the appellant's response to this question. The content of attached letter asserts that in the applicant's opinion the City has lost the permit for the original structure. Lastly,

the letter asserts that because of the proximity to City Hall and annual fire inspections had the structure not been legally constructed the ownership would have been notified or not allowed to completed construction.

The content of the letter does not provide concise statements for each alleged error of fact or law. Information regarding the structure such as plans for construction or any evidence to support the assertion that the structure was completed through a legally compliant and binding process has not been provided or discussed. The proximity of a structure to City Hall does not provided assurance, fact or guarantee that City code enforcement staff would have been made aware of non-permitted construction taking place and the appellant has not provided evidence or fact in-support of the assertion. The appellant did not included factual basis or specific procedural error believed to be committed in relevancy to their statement that fire inspections have been completed annually. For these reasons staff respectfully request that the Hearing and application for appeal be dismissed.

**3. The specific relief requested;**

- a. The applicant is requesting the following relief:
  - *To have structure destroyed by fire classified as legal non-conformance.*
    - The appellant has provided no evidence or information and documentation to support their request that the structure was legally conforming at time of construction or that a procedural error has been occurred.

The appeal application was required to be submitted completely and in-full no later than November 30, 2016. The appeal was submitted within this required time period.

### **ANALYSIS OF ASSERISONS**

Statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria was not provided by the appellant, due to this fact staff has provided an analysis and response to three general complaints or feelings submitted as part of the attached letter to the Application for Appeal.

**1. The City has lost the permit or approvals for the structure.**

The appellant has provided no supporting information to this assertion. The City has had a permitting and retention process in place for a significant number of decades. The appellant has not provided staff with a copy of construction plans, applicant permit copy, specific dates or other information that was on the permit. There is no evidence to support a permit was issued on the structure. Photos of the original structure support instead that the wooden framed portion was built secondary after the construction of the warehouse.

King County Assessor's office document the building assessed as 7,500 square feet. When using the tools provided in GIS and King County IMAP, it can be confirmed that the permitted warehouse structure is 7,500 square feet. The 7,500 square foot masonry warehouse structure was built in 1970. It can be assumed that due to procedures, permitting requirements and codes in place that any permitted structures more recent than the one shown on-file and document in 1970 would also be acknowledged through assessment, appraisal and permit data information both at the time of construction and since.

**2. The City has completed fire inspections annually and never contacted or informed the owner of the structure being illegal.**

Annual fire inspections do not assess code compliance of all development regulations, development structural permitting or other aspects outside of general fire and life safety. Fire inspectors are not building code enforcement staff and would not have been assessing or looking at elements of the structure outside of the general fire compliance issues. Annual inspections on the building for fire associated compliance is not related to whether the structure was originally permitted for construction or is illegally non-conforming. Additionally, such a determination would not be made in any form by fire department staff.

**3. The building was located too close to City Hall for any portion to have been constructed without permits.**

The proximity of a structure to City Hall does not provided assurance, fact or guarantee that City code enforcement staff would have been made aware non-permitted construction was taking place and the appellant has not provided evidence

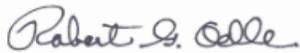
or fact in-support of the assertion. Code enforcement within the City is strongly complaint based and it is unlikely that due to the actual location off any main arterials that staff would have been alerted to the construction. Additionally, the appellant has not provided any facts to support the statement that the proximity of the structure to City Hall guarantees compliance or a pattern that code compliance issues in close proximity to City Hall are certain to be observed and addressed at the time of violation by staff.

### **STAFF RECOMMENDATION**

Based on the analysis included in this report, staff recommends the Hearing Examiner deny the appeal of the City's decision to not permit reconstruction of the illegal nonconforming structure.

### **CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION**

The appellant has the burden to prove that the City erred in issuing the Denial to permit the reconstruction of an illegal nonconforming structure. The appellant has provided no evidence to meet that burden and cannot establish that the City erred procedurally or substantively in issuing the denial.



Robert G. Odle, Director  
Department of Planning and  
Community Development



Linda E. De Boldt, Director  
Department of Public Works