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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeal of

No. TREE-2017-05720

Carol Rich and William Wurtz

**AMENDED APPLICANT RUDOLPH'S
MOTION FOR SUMMARY RELIEF**

of approved Tree Removal Permit
TREE-2017-05720/IVR #-151793
Authorizing removal of cedar tree at 17521
38th Ct., Redmond
Issued August 4, 2017

**I.
INTRODUCTION**

Pursuant to the Order Setting Hearing and Pre-Hearing Document Exchange Schedule, dated September 6, 2017, the applicant and owner of the subject property, Cheri L. Rudolph (“Rudolph”) hereby files the following Motion for Summary Relief. Rudolph respectfully requests dismissal of the entirety of the appeal filed by Carol Rich and William Wurtz (collectively “Rich/Wurtz”) on the grounds that Rich/Wurtz fail to state a claim upon which the Hearing Examiner may grant relief. Alternatively, Rich/Wurtz raise no genuine issue as to any material fact and Ms. Rudolph is entitled to judgment as a matter of law. In particular, all

1 parties agree that the subject tree is less than 30 inches in diameter and, therefore, constitutes a
2 “significant tree” under applicable regulations. Per the City’s regulations, significant trees are
3 removable as a matter of right (regardless of their condition), subject only to applicable
4 mitigation, the latter of which is not challenged by Rich/Wurtz. Inasmuch as a hazard
5 evaluation is not required, and the Rich/Wurtz appeal is premised entirely upon the alleged
6 healthy condition of the tree, the Examiner should dismiss the appeal.

7
8 **II.**
BACKGROUND

9 **A. Tree Removal Decision Criteria**

10 The City of Redmond (“City”) regulations applicable to tree removal are contained in
11 chapter 21.72 RZC. As explained in greater detail below, subject to certain codified exceptions,
12 the City requires a tree removal permit for any tree over 6 inches in diameter. *See* RZC
13 21.72.020.A. In turn, the applicable decision criteria largely depend upon the size of the subject
14 tree and its accompanying classification.

15 **1. Significant Trees**

16 Specifically, the City defines a “significant tree” as “[a]ny healthy tree six inches in
17 diameter at breast height (d.b.h.), or any tree four inches in diameter at breast height (d.b.h.)
18 that, after considering its age, height, value, or function, the tree or tree stand is determined to
19 be significant.” RZC 21.78, “S” Definitions. Once a tree exceeds 30 inches in diameter, the
20 tree is classified as a “landmark tree.” Specifically, a landmark tree is defined as “[a]ny healthy
21 tree over thirty inches in diameter.” RZC 21.78, “L” Definitions. In contrast, “hazardous trees”
22
23

1 are excluded from the definitions of both significant and landmark trees.¹ In other words, if an
2 applicant demonstrates that a tree is hazardous, it may be removed, regardless of its size.

3 Not surprisingly, City regulations do not require any showing of necessity or any tree
4 hazard evaluation for the removal of significant trees (*i.e.*, trees less than 30 inches in diameter).
5 Instead, depending upon the nature of the subject property (*e.g.*, single-family residence,
6 apartment building, etc.), applicable regulations merely limit the quantity of trees that can be
7 removed in a calendar year as well as any required mitigation. *See* RZC 21.72.020B through E.
8 Relevant for purposes of this appeal, a condominium may remove “no more than five
9 significant trees per acre per year.”² RZC 21.72.020C. For the removal of significant trees,
10 “[r]eplacement trees shall be planted as provided in RZC 21.72.080.” *Id.* In turn, RZC
11 21.72.080 requires that each “significant tree to be removed shall be replaced by one new tree.”
12 RZC 21.72.080B.

13 2. Landmark Trees

14 In contrast, the City’s regulations with respect to a landmark trees (*i.e.*, trees greater than
15 30 inches in diameter) are markedly different than those for significant trees. In particular,
16 landmark trees cannot be removed unless they meet the criteria for an exception set forth in
17 RZC 21.72.090. Where removal of a landmark tree is authorized, it “shall be replaced by three
18 new trees.” RZC 21.72.080B. Again, because hazardous trees are excluded from the
19

20 ¹ *See* RZC 21.78, “H” Definitions (defining a “hazardous tree” as “a tree that is dead, or is so
21 affected by a significant structural defect or disease, that falling or failure appears imminent, or a
22 tree that impedes safe vision or traffic flow, or that otherwise currently poses a threat to life or
23 property.”).

² The appeal statement tellingly does NOT allege that the subject application would cause
Fairweather to exceed its annual tree removal limit.

1 definitions of both significant and landmark trees, any tree can be removed (without any
2 required tree replacement) upon a showing by a certified arborist that the tree is hazardous,
3 dead, diseased, dying, injured, or in a declining condition. RZC 21.72.080.B.1.

4 The City summarizes its regulations pertaining to tree removal on its website as follows:

5 “A Tree Removal Permit is required for removal of any significant tree
6 within the City of Redmond regardless of its condition. A tree removal
7 permit is not required for routine maintenance. Routine maintenance
8 includes selective pruning.

9 ...

10 For multifamily residential, commercial and industrial properties, the
11 maximum number of health trees removed per year is five (5) per acre.

12 Landmark trees (greater than 30 inches in diameter at 4.5 feet above the
13 ground), protected trees, and trees within a critical area (*i.e.* Native
14 Growth Protection Easement or a wetland/stream buffer etc.) cannot be
15 removed unless they are determined to be hazardous, dead, diseased,
16 dying or structurally unsound by a certified arborist.

17 Rodabough Decl., at Ex. 2. These regulations are also summarized in the City’s permitting
18 bulletin. *Id.*, at Ex. 3.

19 **B. Tree Removal Permits/Type I Decisions**

20 In the City, a tree removal permit is classified as a “Type I” administrative decision. *See*
21 KZC 21.76.050B, Table of Classification of Permits and Decisions. By legislative design, Type
22 I decisions are largely ministerial, non-discretionary permits that have the “[l]east level of
23 impact or change to policy/regulation” and involve the “[l]east level of discretion.” *See* RZC
24 21.76.050A, Table of Permit Types. Decisions on Type I permits are made by “the appropriate
25 department director or designee.” RZC 21.76.050.F.1. *Accord* RZC 21.76.060.D.1. In turn, the
26 decision of the director or designee “shall be based on the criteria for the application set forth in
27 [the Code].” RZC 21.76.060.D.2. “The decision shall include any conditions necessary to
28 ensure consistency with the applicable development regulations.” *Id.* The issuance of a tree

1 removal permit is deemed to be so routine, rudimentary, and non-controversial, that the City's
2 permitting bulletin states that "[m]ost Tree Removal Permits can be reviewed and approved in
3 the Development Services Center when you come in to apply." Rodabough Decl., at Ex. 3.

4 **C. Appeals of Tree Removal Permits/Type I Decisions**

5 **1. Parties of Record**

6 Only a "party of record" is entitled to appeal a Type I decision. *See* RZC
7 21.76.060.I.2.a. (limiting the identity of appellants to "[a]ny party of record."). In turn, a "party
8 of record" is defined as follows:

9 "In addition to the project applicant and owner(s) of property subject to an
10 application, any person who:

- 11 A. Submits written or verbal comments prior to the decision maker (as
identified in RZC 21.76.050.B) issuing its decision, and/or;
- 12 B. Participates in an open record, pre decision hearing, and/or;
- 13 C. Signs in at a neighborhood meeting conducted in compliance with
14 RZC 21.76.060.C.2), Required Neighborhood Meeting and/or;
- 15 D. Requests to be made a party of record prior to the decision maker
(as identified in RZC 21.76.050.B) issuing its decision.

16 Any person who completes any of the above actions must also provide a
17 complete, legible postal mailing address to be considered as a party of
record.

18 RZC 21.78, "P" Definitions.

19 **2. Appeal Statement**

20 For an appeal of a Type I decision the appeal statement must meet specific criteria:

21 "b. Form of Appeal. A person appealing a Type I or II decision must
22 submit a completed appeal form which sets forth:

- 23 i. Facts demonstrating that the person is adversely affected by the
decision;

- ii. 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;
- iii. The specific relief requested; and
- iv. Any other information reasonably necessary to make a decision on the appeal.

RZC 21.76.060.I.2.b (emphasis added).

The burden of proof is on the Appellants, as the Hearing Examiner cannot grant relief unless “the appellant has carried the burden of proving that the Type I or II decision is not supported by a preponderance of the evidence or was clearly erroneous.” RZC 21.76.I.4. Additionally, “[t]he Hearing Examiner shall accord **substantial weight** to the decision of the department director.” KZC 21.76.060.I. (emphasis added).

D. The Cedar Tree

Ms. Rudolph owns Unit B-10 in the Fairweather Condominium, also known as 17521 NE 38th Ct., Redmond, WA 98052. The subject cedar tree is located to the rear of Ms. Rudolph’s unit. This cedar tree is less than 30 inches in diameter, as confirmed by the arborists previously retained by Ms. Rudolph and Ms. Rich, respectively. *See* Rodabough Decl, Ex. 8, Declaration of Bruce MacCoy (describing the tree as “approximately 28 inches in diameter”); Ex. 9, Declaration of Kathleen Day (describing the tree as a “27.5 inch diameter (dbh) Western red cedar.” As such, the tree constitutes a “significant tree” under the City’s regulations.

In August of 2016, Ms. Rudolph made a request to Fairweather HOA to have the cedar tree removed. Rodabough Decl. at Ex. 9, Declaration of Cheri L. Rudolph. Although Ms. Rudolph’s purposes for seeking removal of the tree are legally irrelevant to the existing proceedings, Ms. Rudolph’s rationales for seeking removal of the tree are several fold. In

1 particular, (1) the tree roots are pressing up against the foundation underlying her unit, which is
2 causing and/or exacerbating water intrusion from the adjacent and upslope Idylwood Park, (2)
3 the tree branches are overhanging the roof of the condominium building and dropping
4 considerable debris on the roof and her deck, (3) the tree destroyed the prior deck via upheaval
5 from its roots and by facilitating wood rot by leaving it in a frequent state of dampness, (4) the
6 tree has outgrown the small backyard and blocks natural light to her kitchen and living areas,
7 (5) a new french drain must be installed to remedy the surface water intrusion from Idylwood
8 Park, which necessarily requires disturbing the roots of the tree, and (6) the tree has been
9 deemed to be a hazard by her arborist as a result of its size, proximity to the unit, and the risk of
10 striking the unit. *See* Rodabough Decl., Ex. 9, Declaration of Cheri Rudolph.

11 The Fairweather HOA directed Ms. Rudolph to apply to the City to remove the tree.
12 Ms. Rudolph subsequently applied to the City to remove the tree. The Fairweather HOA was
13 subsequently added to the application as a subject property owner.

14 **E. The Lawsuit**

15 On October 3, 2016, Ms. Rich filed a lawsuit in King County Superior Court seeking to
16 prevent removal of the subject tree. Rodabough Decl., Ex. 4, Complaint for Declaratory and
17 Injunctive Relief. Although the City was not identified as a defendant, the Complaint sought to
18 require Ms. Rudolph and Fairweather HOA to “withdraw their joint City of Redmond tree
19 removal permit.” *Id.*

20 In the Complaint, Ms. Rich alleged, among other arguments, that she had an ownership
21 interest in the subject cedar tree sufficient to prevent its removal without her consent. *Id.* After
22 approximately 10 months of costly litigation, characterized by various delays by Ms. Rich,
23 Judge Ruhl rejected Ms. Rich’s claims and dismissed her lawsuit. Rodabough Decl., Exs. 5 and

1 6. In his oral ruling, Judge Ruhl stated that Fairweather had sole authority to allow removal of
2 the tree: “the [Fairweather] board has the sole authority to regulate and maintain common areas
3 and the limited common areas and should have the ability to render a decision about what to do
4 with the tree.” Rodabough Decl., Ex. 5. Judge Ruhl also concluded that Ms. Rich’s legal
5 position was “almost incomprehensible.” *Id.*

6 Following dismissal of the lawsuit, the City Attorney, James Haney, apparently
7 authorized City Staff to begin processing the joint tree removal permit that was applied for
8 nearly a year previously by Ms. Rudolph and Fairweather. Rodabough Decl., at ¶8. On August
9 4, 2017, the City issued the tree removal permit. Rodabough Decl., at Ex. 7. On August 18,
10 2017, Ms. Rich and Mr. Wurtz filed the instant appeal.

11 **III.**
12 **ARGUMENT**

13 **A. Rich/Wurtz Do Not Allege Noncompliance With Any Decision Criteria**

14 Pursuant to RZC 21.76.060.I.2, Rich/Wurtz were required to take the following actions
15 in order to commence their appeal:

16 2. Commencing an Appeal. Type I and II decisions may be appealed as follows:

17 ...

18 b. Form of Appeal. A person appealing a Type I or II decision must submit a
19 completed appeal form which sets forth:

20 ...

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

24 RZC 21.76.060.I.2 (emphasis added). The appeal statement fails to allege specific errors of
25 law, fact, or procedure. Worse, the appeal statement fails to identify the applicable decision
26 criteria, let alone allege the manner in which the decision purportedly fails to satisfy those
27 criteria. For this reason alone, the appeal should be dismissed.

1 Moreover, the entirety of Appellants’ attempt to comply with the above requirement to
2 “identif[y] each alleged error of fact, law, or procedure, and the manner in which the decision
3 fails to satisfy the applicable decision criteria” is contained in Paragraph 2 of the appeal
4 statement. A rudimentary review of the Statement of Error reveals that the Rich/Wurtz fail to
5 raise any issue upon which the Hearing Examiner may grant relief. The following addresses the
6 Statement of Error in light of the above requirement to set forth each alleged (1) error of fact,
7 (2) error of law, and (3) error of procedure, and how the decision allegedly fails to satisfy the
8 applicable decision criteria.

9 **1. Alleged Errors of Fact**

10 The City’s decision identifies the subject tree as being a “27.5 inch cedar tree.”
11 Rodabough Decl., at Ex. 7. The Appellants’ Statement of Error tellingly does not dispute this
12 critical issue of fact. As such, it is considered a verity for purposes of the Hearing Examiner’s
13 review.

14 Moreover, as indicated above, it would be absurd for the Rich/Wurtz to dispute that the
15 subject tree is less than 30 inches in diameter, as its size has been confirmed by the arborists
16 previously retained by Ms. Rudolph and Ms. Rich, respectively. *See* Rodabough Decl, Ex. 8,
17 Declaration of Bruce MacCoy (describing the tree as “approximately 28 inches in diameter”);
18 Ex. 9, Declaration of Kathleen Day (describing the tree as a “27.5 inch diameter (dbh) Western
19 red cedar.” As such, it follows that the tree is considered a “significant tree” for purposes of the
20 City’s regulations. *See* RZC 21.78, “S” Definitions (defining a “significant tree” as a tree that is
21 less than 30 inches in diameter).

22 With respect to alleged errors of fact, Rich/Wurtz allege, without providing any
23 specifics, that the “tree health assessment” that accompanied the application was “defective.”

1 To the extent that this raises an issue of fact, it is not a material fact. As explained above, the
2 City’s regulations don’t require a tree hazard evaluation for the removal of significant trees.
3 Indeed, significant trees may be removed, even if the picture of health, subject only to a
4 requirement to provide appropriate mitigation.³ None of the other potential issues of fact, if
5 any, even remotely raised by Rich/Wurtz, have any bearing upon the applicable decision
6 criteria.

7 The Hearing Examiner must base any decision in this matter upon the applicable
8 decision criteria, and not upon the criteria that Rich/Wurtz wish was contained in the Code. The
9 City Council, and not the Hearing Examiner, is the policy-making body of the City. RMC
10 4.28.010 (“The purpose of establishing an Examiner is to separate the application of land use
11 regulations from policy making.”).

12 2. Alleged Errors of Law

13 The Statement of Error tellingly fails to identify, let alone cite to, any of the applicable
14 decision criteria. Again, to the extent that Rich/Wurtz allege that the City committed an error of
15 law as a result of an alleged failure to consider the health of the tree, their argument must fail as
16 a matter of law. The health of the tree is not one of the decision criteria applicable to the
17 removal of significant trees.

18
19
20 ³ For the removal of significant trees, “[r]eplacement trees shall be planted as provided in RZC
21 21.72.080.” RZC 21.72.020C. In turn, RZC 21.72.080 requires that each “significant tree to be
22 removed shall be replaced by one new tree.” RZC 21.72.080B. Here, the City’s decision
23 required a tree replacement “ratio of 1:1 for each tree removed.” Rich/Wurtz do not dispute the
adequacy of the required mitigation in their appeal statement.

1
2 None of the other potential issues of law raised by the Appellant have any bearing upon
3 the applicable decision criteria.

4 **3. Alleged Errors in Procedure**

5 The Appellants' Statement of Error fails to allege any error in procedure.

6 **B. The Hearing Examiner Does Not Have Jurisdiction to Adjudicate Property**
7 **Interests**

8 During the pre-hearing conference, Mr. Wurtz alleged that the tree should remain
9 because Ms. Rich has a property interest sufficient to prevent its removal without her consent.
10 Although that issue is not raised in the Statement of Error, a similar argument is made in
11 support of a claim for standing. This is not sufficient to raise the issue for purposes of review.

12 Additionally, to the extent that a property ownership issue is raised, the Hearing
13 Examiner does not have jurisdiction to adjudicate property interests/ownership. The jurisdiction
14 of the Hearing Examiner is strictly limited to determining "the application of land use
15 regulations." RMC 4.28.010.

16 Finally, Ms. Rich was given this opportunity to litigate this issue in superior court and
17 lost. She is now barred from raising this claim in these proceedings under the doctrines of res
18 judicata, claim preclusion, collateral estoppel, and/or issue preclusion, among others.

19 Rodabough Decl., at Ex. 4, Complaint for Declaratory and Injunctive Relief; Ex. 5, Transcript
20 of Proceedings; Ex. 6, Order Granting Defendant Rudolph's Renewed Motion for Summary
21 Judgment.

1 **CONCLUSION**

2 Ms. Rudolph has already endured Ms. Rich's utter nonsense in over 11 months of
3 costly litigation. The Rich/Wurtz appeal represents more of the same and fails to raise any
4 issue upon which the Hearing Examiner could possibly grant relief. Accordingly, Ms. Rudolph
5 respectfully requests dismissal of the appeal.

6 DATED this 26th day of September, 2017.

7 LAW OFFICE OF SAMUEL A. RODABOUGH PLLC

8 

9 Samuel A. Rodabough, WSBA #35347
10 *Attorney for Applicant and Property Owner*
11 *Rudolph*

1 **DECLARATION OF SERVICE**

2 I, Samuel A. Rodabough, declare as follows, pursuant to GR 13 and RCW 9A.72.085:

3 On September 26, 2017, I caused the foregoing document to be served on the individuals
4 listed below in the manner indicated:

5 **Office of the Hearing Examiner, City of Redmond**

6 Sharon A. Rice, Hearing Examiner
7 c/o Cheryl D. Xanthos, Deputy City Clerk
Michelle Hart, City Clerk

- Legal messenger for same day delivery
- First Class U.S. Mail
- E-mail: cdxanthos@redmond.gov
mhart@redmond.gov
- Other:

8 **City of Redmond, City Staff**

9 Steven Fischer, Planning Manager
Benjamin Sticka, Planner
10 Carl McArthy, Code Enforcement Officer

- Legal messenger for same day delivery
- First Class U.S. Mail
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- Other:

11 **Appellants Rich/Wurtz, Pro Se**

12 William "Bud" Wurtz
13 Carol L. Rich

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- E-mail: william.wurtz@gmail.com
- Other:

14 **Counsel for Applicant Fairweather HOA**

15 Gabriella Wagner
Becky Phares (legal secretary)

- Legal messenger for same day delivery
- First Class U.S. Mail
- E-mail: wagner@wscd.com
phares@wscd.com
- Other:

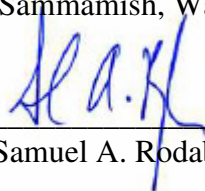
16 **Applicant Rudolph**

17 Cheri L. Rudolph

- Legal messenger for same day delivery
- First Class U.S. Mail
- E-mail: cheri@live.com
- Other:

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct.

21 Executed this 26th day of September, 2017 at Sammamish, Washington.

22 
23 Samuel A. Rodabough