

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

In the Matter of the Appeal of)	APPEAL NO. LAND-2017-01165
)	
)	
RTC 74th Street Property LLC et al)	Redmond Town Center Apartments
)	Impact Fees Appeal
)	
of the November 17, 2017)	
Approval of BLDG-2016-09558)	
Related to the Redmond Town Center)	FINDINGS, CONCLUSIONS, AND
<u>Apartments project in Redmond, WA</u>)	DECISION

SUMMARY OF DECISION

The Appellant did not satisfy the burden of proving that the transportation and park impact fees imposed in the City’s approval of BLDG-2016-09558 were clearly erroneous, and the appeal must be **DENIED**.

SUMMARY OF RECORD

Hearing Date:

Following a December 19, 2017 pre-hearing conference, the City of Redmond Hearing Examiner conducted an open record appeal hearing on February 26 and 28, 2018.

Testimony:

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

For Appellant RTC 74th Street Property LLC:

1. Roberta Lewandowski, former Redmond Planning Director
2. Jeff Haynie, P.E., TENW, Transportation Engineer
3. Michael J. Read, P.E., TENW, Transportation Engineer
4. Curtis Chin, P.E., TENW, Transportation Engineer
5. Suzi Morris, Senior Vice President, Lowe Enterprises Real Estate Group
6. Courtney Klein, JSH Properties, Inc., property manager for Redmond Town Center

Attorneys Larry Martin and Chuck Maduell represented the Appellant at hearing.

For the City:

1. Sarah Pyle, Senior Planner
2. Steven Fischer, Development Services Planning Manager
3. Don Cairns, Transportation Planning and Engineering Manager
4. Min Luo, Senior Engineer, Transportation
5. Carolyn Hope, Park Planning and Cultural Arts Manager

Attorneys James E. Haney and Daniel P. Kenny represented the City at the hearing.

Exhibits:

At the open record hearing the following exhibits were admitted into the record:¹

Appellant Exhibits (identified in Findings by A prefix)

1. Excerpts from Redmond Town Center (RTC) Final Environmental Impact Statement (FEIS), dated November 1985
2. City of Redmond Ordinance No. 1416, effective May 13, 1988
3. RTC Proposed Zoning Master Plan Conditions of Approval, dated April 19, 1988
4. City of Redmond Ordinance No. 1841, effective July 17, 1995
5. City of Redmond Ordinance No. 1551, effective March 31, 1990
6. Letter from City of Redmond to Randy Kyte, dated July 18, 1995
7. RTC Master Plan and Design Guidelines, dated July 18, 1995
8. RTC color photos, dated June 28, 1995
9. Memorandum from Gary Lee to City of Redmond, dated September 5, 2001
10. Memorandum from Rosemarie Ives, Mayor, to City Council, dated June 6, 1995
11. Memorandum from Technical Committee to Planning Commission, dated April 10, 1995
12. RTC EIS Addendum Appendix C - Traffic Analysis Report, dated April 1995
13. Excerpts from Draft EIS Addendum, dated August 18, 1997
14. Determination of Non-Significance and Adoption of Existing Environmental Document, dated August 21, 2001
15. Applicant's response, dated January 10, 1995
16. Redmond downtown park vicinity map
17. City Council Resolution No. 1095, dated June 15, 1999
18. City of Redmond Ordinance No. 1800, effective September 5, 1994
19. City of Redmond Ordinance No. 1847, effective July 31, 1995
20. Table and diagrams of open space plans
21. Public Access Open Space Agreement, dated September 17, 1996
22. Public Access Open Space Agreement, dated September 24, 1996
23. Open Space Taxation Agreement, dated August 19, 1999
24. Public Access Open Space Agreement, dated September 17, 1996
25. Memorandum from Planning Commission to City Council, dated June 15, 1995

¹ The record consists of 4,951 pages. Due to the volume of material submitted, the Clerk's Office prepared a paginated master record that contains all of the submittals. During testimony, witnesses referred both to the party's exhibit number and to the page number in the master record, to the extent possible. These findings refer to exhibit number only.

26. Minutes of Special Meeting of Redmond City Council, dated June 27, 1995
27. RTC EIS Addendum Appendix A, dated January 10, 1995
28. RTC Traffic Mitigation Agreement, dated March 8, 1996
29. Appendix C - Pro Rata Mitigation from RTC TIA, dated April 1995
30. City Council Resolution No. 1023, dated June 18, 1996
31. Fax from Don Cairns (City of Redmond) to Jim Haney (Ogden, Murphy, Wallace), dated October 26, 1995
32. Letter from Don Cairns to Donald March (Cairncross and Hempelmann), dated September 5, 1995
33. RTC Transportation Mitigation, undated
34. City of Redmond Building Permit, issued February 1, 1996
35. City of Redmond Ordinance No. 1097, effective October 10, 1996
36. City of Redmond Ordinance No. 1908, effective October 10, 1996
37. City of Redmond Ordinance No. 1913, effective November 14, 1996
38. City of Redmond Ordinance No. 2072, effective March 30, 2000
39. Memorandum from Technical Committee to Planning Commission, dated September 12, 2001
40. Determination of Non-Significance and Adoption of Existing Environmental Document
41. Memorandum from Jeff Haynie (TENW) to Don Cairns, dated July 25, 2001
42. City of Redmond Ordinance No.1992, effective July 30, 1998
43. Memorandum from Jeff Haynie to Rob Crittenden, dated May 20, 2016
44. Memorandum from Curtis Chin (TENW) to Larry Martin (RTC), dated October 20, 2017
45. Memorandum from Michael Read (TENW) to Min Luo (City of Redmond), dated July 11, 2016
46. Aerial of project site vicinity from Phase II Traffic Impact Analysis, dated July 11, 2016
47. RTC Apartments vicinity map, dated 2017
48. Letter from Macerich Company to Roberta Lewandowski (City of Redmond), dated July 24, 2001
49. Agreement regarding Allocation of Rights to Exemption from and/or Credit Against Impact Fees, dated April 5, 2017
50. Email from Sarah Vanags (Sarah Pyle) to Larry Martin, dated November 2, 2016
51. Email from Jeff Haynie to Larry Martin, dated November 9, 2016
52. City of Redmond receipt, dated November 17, 2017
53. Email from Larry Martin to Jim Haney, dated June 14, 2016

54. House Bill Report ESHB 2842, dated December 18, 1992
55. Note, dated August 23, 2002
56. City of Redmond impact fee calculation form, undated
57. City of Redmond Building Permit, issued April 3, 1998
58. City of Redmond Ordinance No. 1914, effective November 14, 1996
59. Final Bill Report ESHB 2842
60. Final park impact fee worksheet, dated 2006
61. Park impact fees update, Carolyn Hope PowerPoint presentation, dated 2017
62. Parks and trails system map
63. RTC Binding Site Plan
64. RTC apartment references to Master Plan
65. Code interpretation GLA cap
66. TDR deposit check, Marriott
67. Table of GLA calculations
68. Comprehensive Plan amendment drawings, dated January 1998
69. Letter from Macerich Company to Roberta Lewandowski (City of Redmond), dated July 24, 2001 (repeat of Exhibit A48)
70. Display board depicting aerial photographs of RTC and vicinity
71. Display board depicting run at RTC
72. Display board depicting crowd in RTC Plaza
73. Display board depicting sunny day in RTC Plaza
74. Display board depicting crowd around fountain
75. Display board depicting Table 1 from 2001 TIA
76. Display board depicting Table 2 from 2001 TIA
77. Display board depicting RMC exclusion from impact fee
78. Display board depicting site plan showing future development parcel
79. Display board depicting Master Plan (Exhibit A2)
80. Display board depicting Master Plan (Exhibit A3)
81. Display board depicting parks and trails map
82. Display board depicting RTC development phasing
83. Performance bond for temporary parking lot, dated June 19, 2003
84. Exhibits B1 and B2 to Memorandum from Technical Committee to Planning Commission, dated September 12, 2001 (in the record at Exhibit A39)

85. First Amendment of Development Agreement, City of Redmond and Capstone Partners NW LLC, LAND-2015-00850, King County Recording Number 20160408000249

City of Redmond Exhibits (identified in Findings by C prefix)

1. City of Redmond Transportation Master Plan, dated May 2013, updated September 2017
2. City of Redmond Transportation Impact Fee Technical Report, dated August 19, 2014
3. Redmond Town Center (RTC) Traffic Mitigation Agreement, dated March 1996 (repeat of Exhibit A28)
4. RTC Marriot traffic generation memo, dated May 1, 2002
5. RTC traffic study, Entranco, dated April 7, 1995
6. RTC Master Plan and Design Guidelines, dated July 18, 1995
7. Redmond person-mile calculator, undated
8. Screenshot of 2017 Park Impact Fees webpage taken from City of Redmond website on January 24, 2018
9. Park Impact Fees 2017 Informative PowerPoint presentation taken from City of Redmond website on January 24, 2018
10. Parks, Arts, Recreation, Culture and Conservation Plan, adopted June 2017
11. City of Redmond Ordinance No. 1842, Amending Code and Community Development Guide for Redmond Town Center, effective July 17, 1995
12. City of Redmond Ordinance No. 2888, Updating Parks Impact Fees, effective June 20, 2017
13. City of Redmond Ordinance No. 2865, Update to Impact Fee Schedules, effective December 17, 2016
14. City of Redmond Ordinance No. 1913, Implementation of Impact Fees for Parks, Recreation and Open Space, effective November 14, 1996 (repeat of Exhibit A37)
15. City of Redmond Ordinance 1800, Parks, Recreation, Open Space Pro Plan 2000, effective September 5, 1994 (repeat of Exhibit A18)
16. RTC Apartments SEPA checklist, dated June 2, 2016
17. RTC Apartments final Phase II Traffic Study, TENW, dated June 21, 2016
18. RTC final access plan analysis, dated June 1987
19. EIS Addendum, Proposed Master Plan and Development Guide Amendments, dated April 11, 1995
20. EIS Addendum Appendix C - Traffic Impact Analysis Report, dated April 1995 (repeat of Exhibit A12)
21. EIS Addendum Appendix A - Proposed Master Plan and Development Guide Amendments, dated January 10, 1995 (repeat of Exhibit A27)

22. Appendix C - Pro Rata Mitigation, Year 2010 Pro Rata Mitigation Table, dated April 6, 1995 (repeat of Exhibit A29)
23. Impact Fee Invoice from City of Redmond to RTC Apartments, dated November 15, 2017
24. Chapter 7, Transportation Facilities Plan - 2013 through 2030
25. City of Redmond Ordinance No. 1847, Adoption of Comprehensive Plan, effective July 31, 1995 (repeat of Exhibit A19)
26. City Council Special Meeting Minutes, dated June 26, 1995
27. City Council Special Meeting Minutes, dated June 27, 1995
28. City of Redmond Ordinance No. 1992, effective July 30, 1998 (repeat of Exhibit A42)
29. Map showing RTC building square footage created by Min Luo on or about January 24, 2018
30. Park impact fee worksheet, eligible projects allocation list, undated
31. Park impact fee worksheet showing park impact fee calculation, dated 2017
32. Impact fees calculation Form 2012 for BJ's Restaurant and associated screenshot showing amount paid to City
33. EnerGov screenshot of impact fees paid by Archer Hotel, dated 2016
34. Redmond Community Development Guide (revised various dates in 1980s and 1990s, as noted on each page)
35. Administrative interpretation regarding impact fees for alterations to mixed-use structures, dated November 27, 2002
36. Building permits for tenant improvements for new businesses at existing RTC structures
37. Parcel 2C Mixed-Use Multi Family Approval Extension, SPR-08-008, dated January 24, 2000
38. Planning Department Report to Hearing Examiner, Appeal LAND-2017-01165, dated February 12, 2018, with the following attachments:
 1. Redmond Town Center FEIS
 2. City of Redmond Ordinance No. 1416, effective May 13, 1988
 3. RTC Proposed Zoning Master Plan Conditions of Approval, dated April 19, 1988
 4. RTC Master Plan and Design Guidelines, dated July 18, 1995
 5. RTC EIS Addendum Appendix C - Traffic Analysis Report, dated April 10, 1995
 6. Excerpts from Draft EIS Addendum, dated August 18, 1997
 7. RTC EIS Addendum Appendix A, dated 1995
 8. RTC Traffic Mitigation Agreement, dated March 8, 1996
 9. Appendix C - Pro Rata Mitigation from RTC TIA, dated April 1995

10. City Council Resolution No. 1023, dated June 18, 1996
11. City of Redmond Ordinance No. 1908, effective October 10, 1996
12. City of Redmond Ordinance No. 1913, effective November 14, 1996
13. City of Redmond Ordinance No. 2072, effective March 30, 2000
14. City of Redmond Ordinance No. 1914, effective November 14, 1996
15. Park impact fees update, dated 2017
16. City of Redmond Transportation Master Plan, dated May 2013, updated September 2017
17. City of Redmond Transportation Impact Fee Technical Report, dated August 19, 2014
18. Redmond person-mile calculator, undated
19. Screenshot of 2017 Park Impact Fees webpage taken from City of Redmond website on January 24, 2018
20. City of Redmond Ordinance No. 1847, Adoption of Comprehensive Plan, effective July 31, 1995
21. Impact fees paid by BJ's Restaurant, dated 2012
22. City of Redmond Ordinance No. 2114, Amendment to City Center Site Requirements
23. Impact fees paid by Archer Hotel, dated 2016
24. Redmond Municipal Code Section 3.10
25. City of Redmond Ordinance No. 1841, effective July 17, 1995
26. City of Redmond Ordinance No. 1992, effective July 30, 1998
27. Memorandum from Jeff Haynie to Rob Crittenden, dated May 20, 2016
28. RTC building square footage exceeds approved Master Plan
29. Redmond Community Development Guide (previous Zoning Code)
30. Appeal hearing certification of noticing
39. Lowe Enterprises Real Estate Group Redmond Town Center Apartments, Technical Committee Site Plan Entitlement Notice of Decision, dated September 21, 2016
40. Planning Department Report to Hearing Examiner, LAND-2017-01165, Scrivener error corrections
41. Donald Cairns, PE, Curriculum Vitae

Other Documents in the Record

- Appeal application form with attachments (63 pages), submitted November 30, 2017

- Order setting Hearing and Pre-Hearing Document Exchange Schedule, dated December 19, 2017
- Appellant’s witness and exhibit List, dated January 17, 2018
- Addendum to Application for Appeal (2 pages), dated January 31, 2018
- Appellant’s addendum witness and exhibit list, dated February 16, 2018
- City’s witness and exhibit list, dated February 24, 2018
- Appellant’s second addendum exhibit list, dated February 26, 2018
- City’s supplemental exhibit list, dated March 16, 2018
- Appellant’s Opening Brief, dated February 5, 2018
- City’s Pre-Hearing Brief, dated February 5, 2018
- Appellant’s Response Brief, dated February 20, 2018
- City’s Response Brief, dated February 20, 2018
- Appellant’s Post-Hearing Brief, dated March 28, 2018
- City’s Post-Hearing Brief, dated March 28, 2018
- Appellant’s proposed findings
- City’s proposed findings

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

FINDINGS

Procedural Background

1. RTC 74th Street Property LLC (Applicant/Appellant) submitted required applications to build the RTC Apartment project, which consists generally of a six story mixed-use building containing 286 residential units, 9,401 square feet of retail space, and 537 parking stalls to be built on an existing surface parking lot at the northwest corner of the intersection of NE 74th Street and 168th Avenue NE, known as Parcel 5B of Redmond Town Center, which measures approximately 91,486 square feet in area. *Exhibits C38 and C39.*
2. The subject property is zoned Downtown (DT) and is situated within the Downtown/Redmond Town Center as identified in the Comprehensive Plan land use map. All surrounding properties share the site’s DT zoning. Primary internal vehicle access for this site is gained from NE 74th Street (a private right-of-way), and primary external vehicle access is gained from Bear Creek Parkway (a public right-of-way). *Exhibit C38.*
3. On November 17, 2017, the City of Redmond (City) Technical Committee approved building permit BLDG-2016-09558 for the Redmond Town Center Apartments project.

The building permit imposed impact fees pursuant to Redmond Municipal Code (RMC) Chapter 3.10. Among the impact fees imposed were park/open space fees in the amount of \$826,492.14 and transportation impact fees in the amount of \$1,229,445.23. *Exhibits C38 and C39; Application for Appeal.*

4. The Appellant paid the invoiced impact fees under protest² and then timely appealed the building permit, alleging the following (paraphrased) errors in building permit approval:
 - The City did not provide transportation impact fee credit for the remaining traffic credits from the Redmond Town Center Master Plan.
 - Parks impact fees should not be required given Redmond Town Center's dedicated extensive open space.

Central to the appeal is Appellant's primary contention that the impacts these fees are intended to address were already mitigated through the State Environmental Policy Act (SEPA) review process when the Redmond Town Center Master Plan was originally reviewed and approved in the 1990s. The Appellant requested that the transportation and parks impact fees be refunded. *Appeal application form with attachments (63 pages), submitted November 30, 2017; Appellant's Post-Hearing Brief, dated March 28, 2018.*

5. On February 26, 2018, the hearing in the appeal was convened; it continued to February 28th, with 16 hours of testimony and argument. *Exhibit C38(30)*. Given the volume of material submitted, the undersigned asked for written closing arguments and proposed findings from the parties.

Appellant's Case

6. During the 1980s and 1990s, Redmond amended its land use plans and zoning, annexed land, and approved an initial master plan and later a revised master plan to facilitate development of approximately 119 acres of land which became known as Redmond Town Center. Environmental analysis of these various actions was set out in the following SEPA documents:

- Maingate Draft and Final EIS 1982
- Draft and Final EIS for Redmond Town Center 1985
- Town Center Site Development and City Center Neighborhood Plan Alternatives
- Draft and Final Environmental Impact Statement 1987
- First EIS Addendum for Redmond Town Center 1995
- Second EIS Addendum for Redmond Town Center 1997

Exhibits A9 and A13.

² Impact fees may be paid under protest to obtain a building permit or other approval or permit. *RMC 3.10.140(B)*.

7. The City subsequently annexed a major portion of the 119-acre site, which was formerly the 90-acre Redmond Golf Course and the 29-acre Butler-Walls property. The site was zoned for a mix of 23 uses, including retail, office, and residential. *Exhibits A5, C19, and C38*. The concept for the Town Center at the time of initial approval was a traditional indoor mall. However, the mall did not attract sufficient anchor department stores to meet conditions the City placed on development of the enclosed shopping center. In 1994, Redmond Town Center's owner proposed a modified development concept and master plan that replaced the enclosed shopping center with an open air mixed-use district. *Roberta Lewandowski Testimony*.
8. The Redmond Town Center Master Plan was approved through Ordinance No. 1841, effective July 17, 1995, adopting the open air mixed-use district concept through as part of a revised master plan (Master Plan). The approved Master Plan consists of an open air mixed-use center of 550,000 to 650,000 square feet, an office park of 500,000 to 600,000 square feet, and related retail of up to 200,000 square feet, for a maximum gross leasable area of 1,375,000 square feet. While no residential development was proposed in the Master Plan, the adopted zoning retained the mixed-use concept, including multifamily residential development, as a permitted use. *Exhibits A4, A6, and A7*.
9. In 1998, the Redmond Town Center owner applied for and subsequently received approval of a mixed-use housing development project to be located on Parcel 2C in Redmond Town Center. This approved development was never built. *Exhibits A41 (Approval letter, attachment E to Transportation Study) and C37*.
10. In 2001, the then-owner proposed amendments to Redmond Town Center zoning that would raise the maximum square foot floor area limit on commercial development. The Redmond Technical Committee provided a report to the Planning Commission that included a summary of the owner's plans for development of remaining undeveloped parcels, including Parcel 5B, which stated the following:

The Macerich Company plans to add a two-story department store with 110,000 to approximately 120,000 square feet of gross leasable area on the west half of parcel 5B. A retail/commercial use of this size is currently allowed under the existing 1.49 million square feet floor area limit. The east half of this parcel is envisioned by the owner to eventually include mid-rise residential use with ground floor commercial. ...

Residential uses within the sub-district (Town Center) are not bound by the commercial floor area limit. In addition to the potential 250 unit mixed-use residential structure on the east half of parcel 5B, existing regulations allow several hundred more residential units, which could be constructed on vacant parcels or over the existing surface parking lots within Town Center. Residential additions would be bound by height limits and design standards, as in other districts.

Exhibits A39 and A46.

11. The Technical Committee memorandum to the Planning Commission regarding the proposed 2001 amendments addressed traffic generated by the then-existing Redmond Town Center development and future development anticipated to occur under the proposed amendments:

The City's traffic consultant prepared an updated trip generation analysis (see Exhibit F) indicating that the site has produced far less peak hour traffic than predicted, and that the addition of a hotel, plus already allowed retail and residential, will not increase peak trips above what has already been prepared for.

Exhibit A39, page 7. The traffic analysis was accompanied by a SEPA notice of determination of non-significance (DNS) and adoption of existing environmental document finding no probable significant environmental impact would result from the Redmond Town Center owner's 2001 proposal. *Exhibit A41.*

12. According to the Appellant, the Redmond Town Center Apartments project would be the first residential project constructed as a part of the Redmond Town Center mixed-use master planned development for which the City required, and the Appellant's predecessor in interest provided, extensive mitigation of transportation and park/recreation/open space impacts under SEPA for the full build out of the Redmond Town Center Master Plan. *Suzi Morris Testimony.*
13. The central issue in the appeal is the Appellant's argument that where mitigation of a development impact has been imposed under SEPA, state and local law prohibit cities from imposing a duplicative impact fee to address that same impact. The Appellant contended that the City's decision in this case not to exempt the RTC Apartments development from park and transportation impact fees, or to fully credit the Appellant for the previous owner's mitigation of park and transportation impacts, amounts to unlawful "double dipping" that violates RCW 82.02.050-.090, RCW 82.02.100, and RMC 3.10.060, violates the proportionality standards of RCW 82.02.020, and constitutes an unconstitutional taking of property. *Appellant Briefing.*
14. The Appellant pointed to the history of zoning and land use plans governing development of Redmond Town Center, which have continued to envision multifamily residential development as a component of mixed-use development on-site. The Redmond Town Center FEIS, dated November 1985, described the initial proposal as follows:

The proponent's preferred course of action is receipt of necessary approvals that would allow development of the 124-acre site as a mixed use commercial center. The center would consist of a regional shopping center, offices, additional retail uses detached from the shopping center, multifamily housing, and public open space.

Exhibit A1 (Redmond Town Center FEIS). The multifamily housing alternative assumed 2,183 multifamily housing units would be developed on the property. *Exhibit A1, page 21.*

15. The Appellant offered the testimony of Roberta Lewandowski, former Redmond Planning Director, who oversaw the staff during the SEPA reviews for the EIS, the Comprehensive Plan and zoning amendments, and the project review of the Master Plan. Ms. Lewandowski testified that the approved Master Plan included residential use as an allowed use for the site, established residential densities, and promoted a mix of uses including residential. Parcel 5 was designated with a housing overlay, which was meant to convey that housing was allowed in addition to any commercial square footage developed on that parcel. Residential use was intended to make the Town Center more active and to stimulate night time activity; otherwise restaurants would serve noon demand only. At the time it was expected that the residential uses would mitigate, or at least be less impactful than, the commercial uses; people who lived there would walk rather than drive to commercial uses in the Town Center. *Roberta Lewandowski Testimony.*
16. As a condition of its 1995 Master Plan approval, the City required the Town Center property owner to build the majority of the transportation improvements identified in the Master Plan prior to the issuance of occupancy permits for the land uses approved in the first phase of the planned development. This included extensive street, intersection, signalization, lighting, and sidewalk improvements, dedication of land for rights-of-way, conveyance of easements, and approximately 6,000 lineal feet of bike trails added to the City/regional bike trail system. Required transportation improvements included Bear Creek Parkway, portions of NE 76th Street, 170th Place NE, Leary Way, Redmond Way, 164th Avenue, 166th Avenue, 168th Avenue, and various traffic signals. The total cost incurred by Redmond Town Center for off-site transportation improvements as identified by the Planning Commission was \$16,519,000, including \$7,856,000 for the value of land required to be dedicated for off-site street improvements and \$7,416,000 for the design and construction of these off-site transportation improvements.³ The Six-Year Transportation Improvement Program adopted by City Council Resolution No. 1023 on June 18, 1996 listed “Town Center Improvements” as Project No. 37, with a total cost in the amount of \$14,400,000 listed as funded. The funding source was identified as “DEVLPR.” *Exhibits A6, A28, and A30.*
17. When asked why the developer of the Master Plan was required to make such sweeping transportation and recreation/open space mitigation prior to the first phase of a multiphase Master Plan, Ms. Lewandowski testified that the open space needed to be preserved up front in order to avoid any disturbance, and that traffic impacts needed to be mitigated in Phase I because the area was previously “a little tiny downtown.” When asked whether the mitigation required during Phase I was intended to mitigate the impacts of full build out, Ms. Lewandowski testified that she would have to look through the documents to give an accurate answer, but that streets and sidewalks and related infrastructure were certainly required prior to Phase I to address all the development

³ In another context, the historical information available shows that in a June 27th, 1995 presentation to the City Council, Redmond Transportation Division Manager Don Cairns stated that the value of dedicated right-of-way combined with the cost of engineering/ construction totaled approximately \$15.3 million. *Exhibit A26, page 226.*

contemplated at the time the Master Plan was approved. *Roberta Lewandowski Testimony.*

18. In addition to dedicating land and building transportation facilities then on the City's transportation improvement program, the previous SEPA review of the Master Plan included the requirement that the developer pay transportation impact fees pursuant to the City's "pro rata share" (pre-GMA) SEPA transportation impact mitigation fee system. *Exhibits A4, A6, and A28; Jeff Haynie Testimony.* A detailed mitigation table prepared as part of the analysis of Redmond Town Center transportation mitigation provides an itemization of the Transportation Facilities Plan (TFP) projects and mitigation fee amounts, showing the same total fee of \$5,531,973. *Exhibit A29.* Many of the transportation facilities that were required to be constructed as a condition of approval of the 1995 Redmond Town Center Master Plan were identified as system improvements on the TFP. The City reduced the pro rata fees by crediting a portion of the costs of construction of the required TFP improvements. The net amount of the cash fees that remained, beyond credit for facilities constructed, for phase I of Redmond Town Center was \$229,277. *Exhibit A28 and A31.*
19. In support of its argument that the mitigation required at Master Plan approval has more than adequately mitigated the impacts of the Redmond Town Center on City facilities, the Appellant offered several historical documents relating to the Town Center. A September 12, 2001 Redmond Technical Committee report to the Planning Commission included a summary of plans for development of remaining vacant Town Center parcels. This document acknowledged a plan for residential mixed-use development of the eastern portion of Parcel 5B (*Exhibit A39, page 3*) and went on to discuss the results of the earlier provided transportation mitigation imposed on Redmond Town Center, while addressing a proposal to increase the amount of allowed commercial development:

The traffic study prepared in 1997 estimated that the Town Center site with 1.49 million square feet would attract a total of 3,336 peak hour trips, which included 2,367 trips that would be drawn to the site because of the uses, as well as 969 trips already passing by the site that would now enter. This number was determined using conservative estimates provided in the ITE (Institute of Transportation Engineers) Trip Generation Manual. The updated analysis checked actual driveway trip counts at the center, compared to the forecast. Below is a summary of the updated trip generation analysis. The analysis indicates that total trips, including destination and pass by, average 2,492 at peak hour.

Exhibits A39 (pages 6 and 7) and A43.

20. The Appellant noted that in 2002 the City issued a SEPA DNS and Notice of Adoption of SEPA document related to the construction of a 110,000 square foot two story department store initially occupied by the Bon Marché (currently Macy's) immediately adjacent to the Redmond Town Center Apartments development site on the west side. *Exhibit A40.* In that 2002 review, Appellant pointed out that the City recognized the Bon Marché project as exempt from transportation and park impact fees expressly because of

the traffic system improvements previously made by the Town Center and because of the valuation of the open space dedication at the Town Center. The Appellant noted that fire impact fees were required for the project. *Exhibit A55; Appellant Briefing*. Traffic and park impact fees were not charged for the REI building in 1998. *Exhibit A57*.

21. In reviewing the instant Redmond Town Center Apartments project, the City required Phase I and Phase II traffic impact analysis to be performed. The Phase I analysis is summarized in the Phase II Traffic Impact Analysis, which is dated July 11, 2016. The Phase II analysis concluded that the traffic generated by the Redmond Town Center Apartments Project was “not expected to result in any significant adverse traffic operational impacts or increase in average vehicle delay at any of the signalized or unsignalized study intersections per the detailed traffic operational impact analysis.” *Exhibit A45, page 11*.
22. The Appellant offered testimony from a transportation engineer who was involved from the time of the 1995 Master Plan review, Jeff Haynie, formerly with Entranco and now with TENW. Mr. Haynie testified that the mitigation imposed in the 1995 Master Plan approval was intended to address full build out of Redmond Town Center up to the threshold of 2,363 PM peak hour trips, and that the then-applicant agreed to build all transportation facilities up front prior to the first phase. At the time, it was a very large dollar amount. He testified that the mitigation was intended to address future build out of Parcel 5. In his opinion, mitigation was based on number of trips, rather than on specific types of land uses, and the transportation improvements constructed and pro rata shares paid were in fact adequate mitigation of full build out through the threshold of 2,363 PM peak hour trips. Mr. Haynie referred to these as entitled trips. *Jeff Haynie Testimony; Exhibit A12*.
23. After the 1995 Master Plan adoption, the developer decided there would need to be more office space and less retail space at the Town Center. Based on a proposal to that effect, there was an EIS addendum addressing an increase up to 1.49 million square feet of commercial gross leasable area (GLA), in which previously approved retail space was converted to office. Office uses generate less traffic than retail, and with the increased GLA, PM peak hour trips only went up by four, to 2,367 PM peak hour trips. Subsequently, the City approved a transfer of 281 entitled trips from a project known as RTC West to Redmond Town Center as part of an agreement to keep the RTC West site undeveloped, resulting in a total of 2,648 entitled trips for Redmond Town Center. When the Marriott Hotel was later added to the RTC site in 2002, Mr. Haynie’s firm conducted a traffic count for the Redmond Town Center and determined the total site count was 2,254, 394 trips below the entitled trip threshold. *Jeff Haynie Testimony; Exhibit A43*.
24. The Appellant contended that when RTC Apartments was proposed, those 394 trips remained available. Mr. Haynie prepared a memorandum, dated May 20, 2016 and addressed to the City of Redmond, that stated the following:

DRA Advisors...is the current owner of those portions of the revised Town Center Master Plan area designated as sires for future development. We understand

DRA Advisors can transfer a portion or all of the remaining 394 PM peak hour entitled trips to a third party for use to satisfy fees and transportation concurrency as long as the receiving project falls within the boundaries of RTC.... It is our understanding that a third party is planning a proposed project on Parcel 5B...[that] would include an 8-story mixed use building containing approximately 285 residential units and 8,092 sf of ground-floor retail. The estimated trip generation for this project is 127 PM peak hour trips. With 394 entitled PM peak hour trips remaining on the RTC site, 127 PM trips could be transferred to accommodate the proposed Parcel 5B development and still have 267 remaining entitled PM peak hour trips to accommodate future development.

Exhibit A43; Jeff Haynie Testimony.

25. According to Mr. Haynie, the City was initially open to considering the transfer of entitled trips to address traffic impact fee requirements. Emails offered in evidence appear to support this. *Exhibit A51.* Mr. Haynie testified that, after issuing a determination of non-significance (DNS) for the RTC Apartments project that acknowledged the possibility of an entitled trips transfer, the City decided that transfer of trips would not be acceptable.⁴ *Jeff Haynie Testimony.*
26. In October 2017, transportation engineering firm TENW prepared a report titled “2017 Updated RTC Traffic Counts” which concluded that, as of September 2017, Redmond Town Center’s actual trip count was 2,445 PM peak hour trips at site driveways. The 2017 traffic counts used current, actual traffic, added trips attributable to vacancy in tenant space at the time of the counts, and added trips projected to result from ongoing and permitted future development at Redmond Town Center, including the instant project. *Exhibit A44; Jeff Haynie Testimony.* At hearing, Mr. Haynie submitted that the fact that actual trip rates at present day Redmond Town Center have remained under the total entitled trips proves that the initial trip generation rates were conservative and accurate, and that mitigation conducted at time of Master Plan approval was adequate for full build out. Based on the City’s DNS issued for the RTC Apartments project, he posited that no new significant adverse traffic impacts would result from construction of the apartment project. Mr. Haynie testified that, in his opinion, it would be overcharging the developer to collect impact fees for the RTC Apartments project. *Jeff Haynie Testimony.*
27. Addressing the City’s contention that the 1996 Traffic Mitigation Agreement was intended to mitigate traffic impacts only through the year 2010, Mr. Haynie testified that 2010 was the horizon year of the City’s Transportation Facilities Plan at the time, and that reference to the year 2010 in the Agreement only meant to reference the horizon year. He argued that the document contains no reference to the life or term of the Agreement and that, from his point of view, it does not indicate an intention by the

⁴ The DNS issued for Redmond Town Center Apartments was not offered in evidence. The undersigned takes judicial notice that the Department of Ecology SEPA register indicates that the DNS was issued in August 2016.

parties that mitigation be vested only through that year. He acknowledged that there was no residential development mentioned in the Agreement. *Jeff Haynie Testimony.*

28. According to the Appellant, the City required that the impact of the Redmond Town Center on public park/recreation/open space facilities be mitigated under SEPA by providing open space on-site. Mitigation imposed included dedicating 44 acres of land to public open space use, building public trails, and other facilities in public open space areas.⁵ A densely vegetated area northwest of Leary Way, including mature evergreens containing a heron rookery, was to be protected in perpetuity. A conservation easement was recorded. The City Council required the green swath to be preserved around the Town Center to protect the appearance of what was functionally a gateway to the City as being forested and also to protect the rookery, stream, and other sensitive areas. The purpose of the open space dedication requirement also included public access to Bear Creek. *Roberta Lewandowski Testimony; Exhibits A4, A6, and A11.*
29. Redmond Town Center public access open space was identified on the City's Capital Improvement Program element on page 68 of the City's Parks, Recreation, and Open Space Plan 2000 (PRO Plan 2000). *Exhibits A16, A18, and A20.*
30. The public dedication of the open space land was conveyed to the City through the recorded public Access Open Space Agreements entered into as of September 17, 1996 and September 24, 1996. *Exhibits A21, A22, and A24.* The benefits intended to be provided to the public by the dedication of the land to public open space use are identified in City Council Resolution No. 1095, which forwarded the City's recommendation to King County for classification of the property as open space for taxation purposes. *Exhibit A17.* The assessed land value of the dedicated open space was identified as \$7,927,900 in the Open Space Taxation Agreement between the property owners and King County. *Exhibit A23.*
31. Current property manager for Redmond Town Center, Courtney Klein of JZ Properties, testified about current recreational use of the Town Center amenities. Discussing photographs offered in evidence by the Appellant, she described that the retail shopping center, hotels, and office uses are surrounded by green open space. She testified that Redmond Town Center hosts the Redmond Saturday market, a summer concert series of live music, and other local events including the Sounders run, a sidewalk sale annual event, and a chalk festival. She noted that recreational uses at Town Center available on a regular basis include the various walkways, restaurants, pedestrian pavilions, the King County trails that go through the open space around the site connecting with King County regional trails, and the central Town Center plaza, which features a fountain, tables, chairs, and gathering places. *Courtney Klein Testimony; Exhibits A71, A72, A73, and A74.*

⁵ The Appellant argued that this is the largest single land dedication required to mitigate development impacts on parks/recreation/open space facilities in the history of the City. *Appellant Briefing.*

City's Case

32. Impact fees were first adopted through City of Redmond Ordinance No. 1913 in November of 1996, after approval of the Master Plan and the associated traffic mitigation agreement. They are implemented through RMC Chapter 3.10. *Exhibit C14*. As stated in the preamble to that chapter, the purpose of impact fees is to implement the Capital Facilities Element of the Redmond Comprehensive Plan and the Growth Management Act through: ensuring that adequate fire, park, school, and transportation facilities are available to serve new development; maintaining the high quality of life in Redmond by requiring that new development bear a proportionate share of the cost of capital facilities necessary to support planned land uses and that new development does not decrease the level of service available to existing residents and businesses; and allowing recovery of the cost of completed fire, park, school, and transportation facilities to the extent that new growth is served by those facilities. *RMC 3.10.010*.

33. The impact fee provisions speak to the exemption/credits the Appellant claims for the fees paid at the time of Master Plan development as follows:

Where a fee has previously been paid for the development activity under the State Environmental Policy Act (SEPA) for all of the system improvements for which impact fees are imposed by this chapter, the development activity shall be exempt from the payment of all impact fees pursuant to RCW 82.02.100. Where a fee previously paid for the development activity under SEPA does not cover all system improvements for which an impact fee is imposed under this chapter, an impact fee credit shall be given to ensure that the City is not collecting both SEPA and impact fees for the same system improvements.

RMC 3.10.060.A.6. System improvements are defined in the State statute as “public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.” *RCW 82.02.090(9)*.

34. The City took exception to the Appellant’s characterization of the current mixed-use residential project (or any other potential residential project) as a planned phase of the Master Plan. *Exhibit C38; Sarah Pyle Testimony*. The 1995 Master Plan approval described the project approved as an open air, mixed-use center of 550,000 to 650,000 square feet, an office park of 500,000 to 600,000 square feet, and related retail of up to 200,000 square feet, for a maximum gross leasable area of 1,375,000 square feet, with no reference to residential development. *Exhibit C6*.

35. Looking at the illustrations in the Master Plan (*Exhibit C38(4)*), the City pointed out the following:

- Figure 2-2 identifies the subject portion of Parcel 5 as “Surface Parking Screened with Landscaping.”

- Figure 2-6 shows the subject portion of Parcel 5 as included within the “Town Center Mixed-Use” overlay.
- Figure 7-1 depicts the Phase I plan for the RTC Master Plan development and shows the subject portion of Parcel 5 as a parking lot.
- Figure 7-2 depicts Phases II and III for the RTC Master Plan development and shows no change to Parcel 5 in Phase II or III.
- No residential overlay is identified anywhere in the *Design Area Overlay* figure.

Sarah Pyle Testimony.

36. While residential development is mentioned and included among the 24 permitted uses in the zone, City Staff asserted that it was not a component of the Redmond Town Center privately proposed Master Plan or any of its phases. The SEPA review for the Master Plan, including the EIS, the traffic studies, and EIS Addenda, did not address residential uses. Parcel 5 was called out specifically as a parking lot. While the figures show that Parcel 5 was a contemplated future location for housing, this mention of potential residential development did not amount to review of the impacts of residential development.⁶ Planning Staff argued that this is an important distinction, because the purpose of a Master Plan is to provide context and clarity for large long-term developments based on a specific layout, specific uses, specific square footages or counts, specific timeline, and associated project improvements. The City argued that to follow the Appellant’s logic, all areas shown as parking lot in the Master Plan would have been considered approved for development of any of the 24 permitted uses. The improvements required to address transportation and recreation/open space impacts for the Master Plan did not consider residential development. *Exhibit C38; Sarah Pyle Testimony.*
37. The City pointed out that an April 10, 1995 Technical Committee memo to the Planning commission (during consideration of the proposed Master Plan) stated that, “although a housing element is not analyzed (in the EIS addendum) as part of this proposal, current zoning regulations allow multiple family development on the site.” *Exhibit A11.* The Planning Commission drafted a similar memo to the Redmond City Council, dated June 15, 1995, which also does not include any reference to a residential component to the proposed Master Plan development. *Exhibit A25; City Briefing.*
38. The City drafted an April 11, 1995 EIS Addendum addressing analysis and information associated with proposed changes to the previously approved but not yet built Redmond Town Center development. Under the heading “Elements of the Proposed action”, page

⁶ Further, Ms. Pyle testified that the existing parking lot on Parcel 5B was approved via a temporary parking permit rather than a permanent site plan entitlement, which would have required additional improvements such as landscaping. The temporary parking permit was approved to serve private agreements that had triggered the need for parking to be provided immediately. On the drawings for the Master Plan it is shown as parking with screening; the screening was never provided. *Sarah Pyle Testimony.*

1 of the EIS Addendum states, “Housing is not an element of the current proposal.” Table 1 of the EIS Addendum identifies zero residential units as part of the “present proposal” and specifically states, “Residential is a permitted use on the site. If it is determined that this use should occur in the future, an additional environmental review may be necessary.” *Exhibit C19, page 8.* Table 3 outlines the three phases of development for the Redmond Town Center and notes that “the site is proposed to be developed in three phases over a four-year period beginning in 1995.” None of the phases lists residential development. Figure 3A shows current Parcel 5 as “RETAIL/OFFICE 2-STORY.” *Exhibit C19.*

39. Redmond Planner Sarah Pyle testified at hearing that she has reviewed all environmental review, entitlements, and King County Assessor information available for Redmond Town Center, and apartments have never been entitled or reviewed for environmental impacts on the site. *Sarah Pyle Testimony.*
40. The City asserted that information in EIS Addendum Appendix A - Master Plan Guidelines and Standards, dated January 10, 1995 (Exhibit C21) - was superseded by the conceptual master plan contained in the approved Master Plan for the Redmond Town Center dated July 18, 1995. *Sarah Pyle Testimony.*
41. Attached to the April 11, 1995 EIS Addendum as Appendix C is the Traffic Impact Analysis Report (dated April 1995, Exhibit C20) that was the basis for the City’s assessment of traffic impacts and for the Transportation Mitigation Agreement for Redmond Town Center (Exhibit C3). Appendix C outlines the trip generation for the proposed land uses, square footage, and ITE Land Use Codes used in the traffic analysis, none of which includes residential. Appendix C Table 3 provides a “Trip Generation Summary by Land Use” and does not analyze any residential component to Redmond Town Center. The “Passby and Internal Trips” section analyzes the passby trips and internal trips assigned to the proposed development and does not use any residential use or square footage. *Exhibit C20.*
42. The City and the then-owner negotiated and entered into a Transportation Mitigation Agreement, dated March 8, 1996, regarding the mitigation of transportation impacts from the construction of mixed-use development at Redmond Town Center. The Transportation Mitigation Agreement states:

It is the intent of the City and TCA that this Agreement shall fully satisfy the requirement that a traffic impact mitigation agreement be entered into. It is also intended that fulfillment by TCA of the requirements of this Agreement shall constitute complete satisfaction of all City requirements upon Redmond Town Center, including all future phases of Redmond Town Center through the year 2010 consistent with the Redmond Town Center Master Plan and the approval for File 95-014, insofar as such requirements are related to mitigation of impacts upon transportation facilities.

Exhibit C3.

43. The City offered the testimony of Don Cairns, who has been the Redmond Transportation Planning Engineer since 2012 and has been with the City since 1983. *Exhibit C41*. Mr. Cairns testified that he was involved in the 1985 SEPA review for the conceptual master plan, personally involved in negotiating the 1996 Transportation Mitigation Agreement on behalf of the City, and involved in the 1995 environmental review of the Master Plan entitlement. Mr. Cairns submitted that the approved 1995 Master Plan was approved as a mixed-use center including retail but not including residential at the time it was reviewed. He supervised the review of the traffic impact analysis submitted with the 1995 Master Plan. The net new trips calculated in the TIA were tied directly to the land uses reviewed, with the number of trips generated by the specific square footage approved for the specific land uses proposed at that time. *Don Cairns Testimony*.
44. According to Mr. Cairns, the City negotiated the inclusion of the 2010 as an end date for the Transportation Mitigation Agreement because at the same time the 1995 Master Plan was being reviewed, the City was in the process of adopting a transportation impact fee ordinance. The owner of Redmond Town Center at the time was concerned that if impact fees were adopted, the City would want to impose them on top of the SEPA required mitigation. The City did not intend to negotiate away its right to impose impact fees at Redmond Town Center in perpetuity and expressly agreed that the Master Plan developer could rely on the mitigation agreement terms for Town Center development through 2010. Mr. Cairns testified that his understanding was that the developer agreed to this term in order to have a sufficient window of time for completion of all three phases of the Redmond Town Center without having to pay additional impact fees. According to Mr. Cairns, there was no consideration of trip credits into perpetuity as part of this agreement. The year 2010 was selected for the agreement because it was the horizon year upon which the City's Transportation Facilities Plan was based. *Exhibits C3 and C22; Don Cairns Testimony*.
45. The City honored the agreement and was flexible with substitutions of uses within the Town Center before 2010. Until 2010, credit towards impact fees was given for 2,363 trips regardless of use. Since 2010, the City has given credit for redevelopment within the Town Center. According to Sarah Pyle, there have been two developments since 2010 in which previously established uses were redeveloped and given credit for the mitigation implemented through the 1995 Master Plan SEPA process. In 2012, BJ's Restaurant received credit for the building area in place prior to redevelopment, previously mitigated, and paid reduced transportation and park impact fees. In 2016-17, the Archer Hotel was also given credit for the previous building and paid the remaining transportation and park impact fees. *Exhibits C32 and C33; Sarah Pyle Testimony*.
46. Addressing the multifamily residential project with ground floor retail (SPR-98-008) approved on Parcel 2C in 1998, Mr. Cairns testified that he was involved in the analysis for that project. Traffic analysis performed included concurrency evaluation. Net new trips from the multifamily residential portion of the development were proposed to be mitigated through payment of transportation impact fees, according to the October 5, 1998 memorandum authored by Jeff Haynie, then of Entranco, as the units had not been

mitigated in the Master Plan. These traffic impact fees were not paid because the units were not built. *Don Cairns Testimony; Exhibit C37.*

47. With respect to the July 25, 2001 trip generation analysis prepared by Mr. Haynie for that year's Redmond Town Center expansion proposal, while the concurrency certificate was issued, Mr. Cairns took issue with the passby trip count, which he viewed as only associated with retail land uses. He disputed the passby trip counts because over time the Town Center had reduced retail use in favor of other commercial uses, and he felt the passby counts in this analysis no longer reflected the actual counts attributable to the existing land uses at the time. According to Mr. Cairns, the traffic analysis relied upon in the approval of the 1995 Master Plan was stale after 2010. *Don Cairns Testimony; Exhibit A41.*
48. In the more than 22 years that have passed since the 1995 Master Plan approval and its required SEPA mitigation, Mr. Cairns submitted that the City's needs have changed, traffic has changed, and the City's approach to traffic management has changed. The former pro rata share SEPA mitigation concept, which concentrated on vehicle traffic and road capacity, has been replaced by a "person miles traveled", multimodal transportation management concept that takes into account and requires construction of capacity for pedestrian, bicycle, transit, and other modes of transportation. *Exhibit C1.* Mr. Cairns emphasized that "person miles traveled" were not considered in the 1995 review of the Master Plan proposed, and the City's Transportation Facilities Plan is completely different now with a model year of 2030. The City has matured and now has two centers. Mr. Cairns submitted that the Appellant's requested credit for 1995 SEPA mitigation-based improvements that would adjust the RTC Apartments impact fees to zero would leave the current TFP underfunded. This would not be fair to other developers who are paying full transportation impact fees with their current multifamily developments. Neither would the Appellant's requested adjustment to reduce the transportation impact due to unique circumstances fees be fair. If they paid zero transportation impact fees, their multimodal impacts would go unmitigated. If their multimodal impacts are not paid by this developer, it would create a deficit in the budget, projects would be delayed or postponed, and other funding would have to be secured. In his opinion, it would be unfair to excuse the Appellant from fees incurred after 2010 for development not that was included in the approved Master Plan. *Don Cairns Testimony.*
49. Regarding parks and open space dedication, the April 11, 1995 EIS Addendum included environmental analysis for recreation and open space mitigation and required "approximately 46 acres [to] be held in a conservation easement or conveyance acceptable to the City for public access and passive recreational use" as mitigation for the loss of then-existing open space and recreation from the conversion of the former golf course into a private commercial venture. The City argued that the 1995 SEPA mitigation was intended to retain acreage to reduce environmental impacts to aesthetics, natural resource protection, and open space, and did not address new or increased demand to parks and recreational facilities resulting from residential development. *Exhibit C19; Sarah Pyle Testimony.*

50. Planning Staff asserted that the open space and recreation mitigation in the EIS and EIS Addendum did not provide for mitigation of then-newly increased demand on parks and recreation facility needs by the increase in people drawn to the area as a result of the shopping center. At the time of construction, the Comprehensive Plan in effect called for 2.5 miles of new trail for every 1,000 persons. The Master Plan developer set aside undevelopable acreage encumbered with floodplain and critical areas. Within the set aside, 0.87 miles of trail were constructed, which fell well below the identified recreational demand of the number of persons the Master Plan's development brought to the area. Further, most of encumbered land was dedicated to the City, meaning the City took over the cost of on-going maintenance of the critical areas, trails, and stormwater facilities treating the runoff from Redmond Town Center's main access off of Bear Creek Parkway. *Exhibit C38; Sarah Pyle Testimony.*
51. Planner Sarah Pyle disagreed with Appellant witnesses' assertions that the plazas and other Town Center amenities outside the formal trails in the open space conservation area provide open/recreational space. She characterized the recreation depicted in Exhibits A71 through A74 as situational recreation, rather than a daily recreation opportunity. Specifically looking at Exhibit A71, the photo shows an event taking place in a private street within the Town Center; the street is closed off, impeding circulation. She argued that private streets are not open space, even if occasionally used for a recreational event. A family cannot sit down and have a picnic or play ball. The photo at Exhibit A73 also shows an event at the center street plaza; the booths have retail goods. The plaza is for shoppers. Ms. Pyle testified that residential uses are required to provide private open space and common open space for the use of the residents only and, in addition, must pay park impact fees. *Sarah Pyle Testimony.*
52. Regarding the distinction between open space for environmental conservation versus recreational use, Ms. Pyle submitted that the vast majority of the open space required as mitigation for Master Plan approval was not intended to mitigate the impacts of residential development on demand for recreation facilities. Only the trail portion is accessible for the recreating public. Residential development generates higher recreation demand than retail development, and multifamily housing generates the highest recreation demand. Ms. Pyle testified that, had there been residential uses proposed at the time, additional mitigation would have been required to meet recreation level of service requirements in effect at the time. *Exhibit C15; Sarah Pyle Testimony.*
53. City of Redmond Park Planning and Cultural Arts Manager Carolyn Hope testified regarding the imposed park impact fees. Ms. Hope testified that the 44 acres already set aside was largely required for aesthetic mitigation, because the shopping center was replacing the golf course. It was also intended to protect Bear Creek and other natural areas. The required open space and mitigation improvements were intended to mitigate the impacts of 1.375 million square feet of GLA; nothing in the SEPA mitigation references an intention to mitigate residential development. Open space is not used to mitigate active recreational needs generated by residential development. Generally, commercial development was not required to mitigate recreational impacts. All recreational standards at the time addressed residential uses, as reflected by the fact that

the standards were based on residential population figures. The City's PRO Plan (Parks, Recreation, and Open Space), adopted in 2000, was a set of guidelines intended to establish level of service criteria for the City to better quantify and more uniformly apply development standards. They were adopted from national data guidelines about how many and what kind of parks should be provided per population segment. They've been interpreted to apply to residential development only. *Carolyn Hope Testimony; Exhibits C15 and C19.*

54. Ms. Hope testified that she could not support a request for the open space dedicated through the Master Plan to be used to satisfy park impact fees required for the instant apartment project, because residential demand was not considered in calculating mitigation at the time the approved Master Plan was reviewed. She stated it would be unfair if the Appellant's park impact fees were adjusted to zero, because other residential and commercial uses in downtown are required to pay park impact fees. She agreed with Ms. Pyle that the Town Center's private streets being occasionally used for recreation does not mitigate the demand for recreation generated by residential uses. She concurred that private streets are not considered open space, even if used for occasional recreational events, because they are intended for vehicles, not recreation. She also agreed with Ms. Pyle that the plazas and gathering areas in the Town Center are not open space, because they are an amenity to Redmond Town Center that draws shoppers, not citizens who want to recreate. *Carolyn Hope Testimony.*
55. Ms. Hope testified that the City's needs for open space have changed in the 22 years since the Master Plan was adopted. There has been significant population and employment growth, and the City finds that people who work in, shop in, and visit Redmond use the park system. This data was gathered through park and trail counts and a recreation registration system related to fees. The PARCC (Parks, Arts, Recreation, Culture, and Conservation) Plan replaced the PRO Plan in 2017 and was adopted along with a capital improvement plan that included a list of projects that need to be built to meet the City's adopted level of service requirements. This list was used to determine the park impact fees that are under appeal. Residents of the RTC Apartments would likely use City parks. Both the Archer Hotel and BJ's Restaurant paid park impact fees. *Exhibit C10; Carolyn Hope Testimony.*
56. Recent projects within Redmond Town Center have paid transportation and park impact fees as follows. The Archer Hotel at the northeast corner of Bear Creek Parkway and 164th Avenue NE paid park impact fees of \$212,105.85 and transportation impact fees of \$302,031.68 in 2016. BJ's Restaurant, adjacent to the east of the Archer Hotel, paid park impact fees of \$815.85 and transportation impact fees of \$21,362.04 in 2012. *Exhibit C38(21) and C38(23); Sarah Pyle Testimony.*

CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050 and RZC 21.76.060.I, Technical Committee decisions are Type II decisions that are appealable to the Hearing Examiner.

Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, 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 I decision is not supported by a preponderance of the evidence or was clearly erroneous.

Conclusions Based on Findings:

1. The purpose of City of Redmond impact fees is to implement the Capital Facilities Element of the Redmond Comprehensive Plan and the Growth Management Act by ensuring adequate transportation and park facilities are available to serve new development. *RMC 3.10.010*. Any person who applies for a permit to undertake any development activity as defined in the Redmond Zoning Code shall pay park and transportation impact fees. *RMC 3.10.050*. The legislature sought to “ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.” *RCW 82.02.050(1)(c)*. *RCW 82.02.050(4)* and *(5)* provide the framework for impact fees. Impact fees shall only be imposed for system improvements that are reasonably related to the new development, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development, and shall be used for system improvements that will reasonably benefit the new development. To the extent that the appeal challenged the City’s impact fee ordinance, while such arguments are beyond the scope of a hearing examiner’s authority, it is the conclusion of the undersigned that the record presented does not support a conclusion that the City’s impact fee provisions fail to conform to the requirements established in *RCW 82.02.050*.
2. The City’s impact fee provisions establish that where a fee has previously been paid for development activity pursuant to the State Environmental Policy Act (SEPA) for all system improvements for which impact fees are imposed by *RMC 3.10*, the development activity is exempt from the payment of all impact fees for those same improvements, consistent with *RCW 82.02.100(1)*.⁷ Where a fee previously paid for development activity under SEPA does not cover all system improvements for which an impact fee is imposed under this chapter, an impact fee credit is given to ensure that the City is not requiring both SEPA mitigation and impact fees for the same system improvements. *RMC 3.10.060.A.6*.

⁷ Pursuant to *RCW 82.02.100(1)*, “[a] person required to pay a fee pursuant to *RCW 43.21C.060* [SEPA mitigation for environmental impacts] for system improvements shall not be required to pay an impact fee under *RCW 82.02.050* through *82.02.090* [impact fees] for those system improvements.”

3. The 1995 City approval of the Redmond Town Center Master Plan did not include environmental analysis of, or mitigation for, residential development, because residential development was not proposed in the three phases approved. The facts that 1) housing was one of more than 20 uses allowed in the established Redmond Town Center zoning regulations and 2) the conceptual master plan referenced housing as an anticipated future use do not, separately or combined, incorporate and/or include hypothetical potential future housing into either the approval or the mitigation that was required. The same is true for all other land uses allowed in the zone that were not specifically proposed in the 1995 Master Plan and subsequent amendments. The approved 2001 Master Plan amendment that expanded the existing limit on gross commercial leasable area and designated the Town Center as a receiving area for TDRs did not include any decisions related to residential uses. Considering the record as a whole in light of the deference owed to the Administrator or the code, it is the conclusion of the undersigned that the instant apartments project is a new project; it is not the same project upon which pro rata traffic mitigation and open space mitigation were imposed in connection with the 1995 Master Plan. *Findings 8, 10, 11, 12, 14, 14, 17, 19, 34, 35, 36, 37, 38, 39, 40, 43, and 49.*

4. With respect to the challenged transportation impact fees:

a. “System improvements” are defined as public facilities that are included in the Capital Facilities Plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. *RCW 82.02.090(9)*. The definition of “system improvements” is clear and unambiguous and refers to public facilities included on the Capital Facilities Plan. The term “system improvements” does not mean general categories of improvements. The transportation pro rata fees previously paid under SEPA by the original Redmond Town Center developer, including the construction of improvements and credits towards those fees, do not address the same system improvements as those that would be funded by the impact fees imposed upon the RTC Apartments development. The exemption available pursuant to RMC 3.10.060 is not available to the Appellant. *Findings 8, 10, 11, 12, 16, 18, 19, 41, 43, and 47.*

b. The 1996 Transportation Mitigation Agreement states the intention of the parties:

It is the intent of the City and TCA that this Agreement shall fully satisfy the requirement that a traffic impact mitigation agreement be entered into. It is also intended that fulfillment by TCA of the requirements of this Agreement shall constitute complete satisfaction of all City requirements upon Redmond Town Center, including all future phases of Redmond Town Center through the year 2010 consistent with the Redmond Town Center Master Plan and the approval for File 95-014, insofar as such requirements are related to mitigation of impacts upon transportation facilities.

(Emphasis added.) This unambiguous language, supported by the credible testimony of Mr. Cairns, establishes that the parties intentionally included the 2010 expiration in

the Transportation Mitigation Agreement. Under Mr. Cairns' credible interpretation of the Agreement, both parties receive benefit: the developer, to be free of additional impact fees for a period of 14 years despite the impending adoption of the City's impact fee ordinance applicable to all new construction; and the City, the benefit of construction of the improvements and payment of pro rata share costs to mitigate the impacts of the first 14 years of Town Center development. Taken as a whole, the record supports the conclusion that the mitigation was intended to address Redmond Town Center development through 2010 only. The owners of the Town Center received full credit for the SEPA mitigation through the year 2010. Credit towards impact fees under RMC 3.10.130 for the RTC Apartments was no longer available when the instant building permit application was submitted. *Findings 16, 18, 20, 22, 23, 24, 26, 27, 41, 43, 44, 45, and 47.*

- c. The transportation impacts analyzed at the time of the 1995 Master Plan approval addressed vehicle trips only; sidewalks were provided but mitigation was based solely on PM peak hour vehicle trips assigned to the square footage of the various office and retail uses proposed. Transportation impacts under the City's current analysis and impact fee structure are assessed based on an entirely different person-miles-traveled, multi-modal system. Because the two impact mitigation systems are structurally different and intended to mitigate impacts related to different types of demand generated by development, there is no straight trip credit that could be effectuated. Regardless of the challenge of calculating credits, none are available. *Findings 16, 18, 19, 20, 43, and 48.*

5. With respect to the challenged park/recreation impact fees:

- a. The SEPA mitigation for open space required of the original Master Plan developer, namely the requirement to set aside open space and construct trails, did not address the same system improvements as those intended to be funded by the park impact fees imposed on the TRC Apartments project. The Appellant is not entitled to an exemption for the park impact fees under RMC 3.10.060. *Findings 8, 10, 11, 12, 17, 28, 49, 50, 52, 53, and 55.*
- b. Credit for the open space dedicated by the original developer cannot be granted because the park/recreation impact fees imposed on the instant apartment project would not be used to fund the same kind of public benefit provided by the original SEPA mitigation - open space - but would instead fund recreational uses - which are not the same system improvement. Further, nearly all of the 44 acres required to be set aside at the time of Master Plan approval are encumbered by critical areas; it was not considered developable at the time of dedication. Today, land encumbered by critical areas cannot count towards required open space. The open space and critical areas conserved are certainly an ongoing benefit to the City, but they do not address the specific recreational demands generated by the proposed multifamily residential dwelling units. The argument that the private roads and shopping plazas within the Town Center should be counted as mitigating recreational demand is particularly unpersuasive. Finally, had the City intended to use the open space mitigation as a

tool to address future residential development, there was a quantitative calculation that should have been used and a level of service analysis that should have been provided, but these were not utilized. *Findings 12, 28, 30, 31, 50, 51, and 54.*

6. It would be unfair for the Appellant to be allowed to rely upon the mitigation provided by the Master Plan more than 22 years ago to avoid paying transportation and parks impact fees resulting from present day development. All other development in the City is required to pay applicable impact fees, specifically including new construction and redevelopment within Redmond Town Center. Because the RTC Apartments project was not an element of the Master Plan when it was analyzed and approved by the City, and because none of the transportation or parks mitigation required of the original developer addressed the specific demands generated by residential development, considering the record as a whole and the deference owed the Code Administrator, it is fair for the City to require payment of transportation and parks impact fees for this project. *Findings 8, 10, 11, 28, 45, 55, and 56.*
7. Evidence and arguments not addressed in these findings and conclusions were, respectfully, not found persuasive.

DECISION

Based on the preceding findings and conclusions, the appeal must be **DENIED**. The Appellant did not satisfy their burden of showing that the City's decision to impose transportation and parks impact fees was unsupported by a preponderance of the evidence or was clearly erroneous.

Decided May 10, 2018.

By:



Sharon A. Rice
City of Redmond Hearing Examiner