

**APPEAL (LAND-2017-01235)**  
**DENIAL TO EXTENSION REQUEST OF LAND USE PERMIT (LAND-2013-01720)**  
**EXTENSION REQUEST**  
**PLANNING DEPARTMENT REPORT TO HEARING EXAMINER PRO-TEM**

MEMO TO: Andrew Reeves, Hearing Examiner Pro-Tem

FROM: Planning Department

DATE: February 20, 2018

PREPARED BY: Ben Sticka, Planner

SUBJECT: ADMINISTRATIVE APPEAL OF CITY'S DENIAL OF THE  
EXTENSION OF LAND USE PERMIT (LAND-2013-01720).

REQUEST: The appellant is appealing the City's denial of the extension of Site Plan Entitlement (LAND-2013-01720). The appellant is requesting that the Hearing Examiner Pro-Tem grant the requested reversal of the decision terminating Site Plan Entitlement (LAND-2013-01720).

HEARING DATE: February 27, 2018

## ATTACHMENTS

- EXHIBIT 1: C-1. December 21, 2017 Wilmoor appeal application and attachment.
- EXHIBIT 2: C-2. December 8, 2015 site plan entitlement approval letter and notice of decision.
- EXHIBIT 3: C-3. September 18, 2017 site plan entitlement extension request letter from Wilmoor to City.
- EXHIBIT 4: C-4. December 8, 2017 Denial of extension request letter from City to Wilmoor.
- EXHIBIT 5: C-5. December 21, 2017 Wilmoor appeal application and attachment
- EXHIBIT 6: C-6. November 13, 2017 notice of application for Wilmoor extensions request
- EXHIBIT 7: C-7. February 8, 2017 email from planner Sarah Pyle to Greg Wilson.
- EXHIBIT 8: C-8. Screenshot of assessor information for Rose Hill Cottages parcel.
- EXHIBIT 9: C-9. Meeting minutes from September 20, 2017 Technical Committee meeting.
- EXHIBIT 10: C-10. September 21, 2017 email from Ben Sticka to Greg Wilson attaching draft Technical Committee approval letter.
- EXHIBIT 11: C-11. September 20 through 22, 2017 emails among Laura Chan, Redmond resident; John Marchione, Mayor of Redmond; Karen Anderson, Director of Planning and Community Development; Ben Sticka, Planner; and Steve Fischer, Planning Manager.
- EXHIBIT 12: C-12. November 8, 2017 email from Ben Sticka to Greg Wilson regarding notice of application for extension request.
- EXHIBIT 13: C-13. Meeting minutes for December 6, 2017 Technical Committee meeting.
- EXHIBIT 14: C-14. December 6, 2017 letter from Greg Wilson to Ben Sticka confirming purchase and sale agreement between Wilmoor and Toll WA LP.

## **BACKGROUND**

**Appellant** Greg Wilson, Wilmoor Development  
11201 SE 8<sup>TH</sup> St., Suite 120  
Bellevue, WA 98004

**Applicant:** Greg Wilson, Wilmoor Development c/o Johns Monroe, Mitsunaga, Klouskova,  
PLLC, Vicki Orrico  
11201 SE 8<sup>th</sup> St., Suite 120  
Bellevue, WA 98004

### **Land Use Permit Key Dates**

Land Use Application Filed: October 3, 2013  
Land Use Application Approved: December 8, 2015  
Land Use Permit Expiration Date: December 8, 2017

**Appeal Filed:** December 21, 2017

**Hearing Date:** February 27, 2018

**Location:** Located at the northeast corner of 132<sup>nd</sup> Ave NE and NE 112<sup>th</sup> Place, Redmond,  
WA 98052

**Parcel Size:** The total area of the site is approximately 8.37 acres.

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

**Land Use Designation:** This property is located in the Single-Family Urban and Single-Family  
Constrained, land use designations within the Willows/Rose Hill Neighborhood.

**Zoning Designation:** The subject site is split zoned, with both R-4 (Single-Family Urban  
Residential) Zone and R-1 (Single-Family Constrained) Zone, located in the Willows/Rose  
Hill Neighborhood.

**Surrounding Land Use and Zoning:**

	Zoning	Land Uses
North:	R-4 (Single-Family Urban Residential) Zone and R-1 (Single-Family Constrained) Zone	Single-Family Homes
East:	BP (Business Park)	Offices
South:	R-4 (Single-Family Urban Residential) Zone and R-1 (Single-Family Constrained) Zone	Undeveloped/Single-Family Homes
West:	City of Kirkland zoning	City of Kirkland single-family residences

**Access:** Vehicular access for this site is from 132<sup>nd</sup> Avenue NE.

**SEPA:** Has not been issued. Application for SEPA submitted for review during PREP as well as, SEPA CAO worksheet.

**NOTICE OF DECISION:** The Notice of Decision was issued on December 8, 2015 (Exhibit 7: C-7. February 8, 2017 email from planner Sarah Pyle to Greg Wilson).

**BACKGROUND**

The application for a Site Plan Entitlement (LAND-2013-01720) was filed with the City of Redmond on October 3, 2013 (Exhibit 1: C-1. December 21, 2017 Wilmoor appeal application and attachment). Following review of this application, the City Technical Committee granted an approval of the application with conditions on December 8, 2015 (Exhibit 2: C-2. December 8, 2015 site plan entitlement approval letter and notice of decision. ). Pursuant to Redmond Zoning Code [RZC 21.76.060 (E) (1)]. Approval of a Type I, II, or III application shall expire two years from the date approval was final unless significant action proposed in the application has been physically commenced and remains in progress.

Since approval of Site Plan Entitlement (LAND-2013-01720) in December of 2015, minimal communications have occurred between City staff and the applicant. These communications included phone calls and an email (Exhibit 7: C-7. February 8, 2017 email from planner Sarah Pyle to Greg Wilson). On February 8, 2017 an email was sent from Mrs. Sarah Pyle, Senior Planner, to Mr. Greg Wilson, Applicant, indicating: “Your current entitlement for Rose Hill Cottages approval will remain in effect until at which time you voluntarily request for them to be

withdrawn and they are followed by a new application approval for Entitlements for the parcel or at which time the current entitlements expire.”

On September 18, 2017, Greg Wilson with Wilmoor Development Corporation submitted a request for a one year extension of Site Plan Entitlement (LAND-2013-01720) for 24 single-family cottage homes with detached garages. Mr. Wilson’s letter indicated the following: “Toll Brothers has been working on the site feasibility analysis with City staff and has submitted a new SPE application for the property. This work to resolve construction and design issues along with substantial effort toward the new SPE should qualify this approval for the requested extension.” (Exhibit 3: C-3. September 18, 2017 site plan entitlement extension request letter from Wilmoor to City). On September 20, 2017 the Technical Committee met to consider the Wilmoor extension request. The minutes from that meeting indicate that the Technical Committee “approved a one year extension request”. (Exhibit 9: C-9. Meeting minutes from September 20, 2017 Technical Committee meeting).

On September 21, 2017, Ben Sticka, Planner emailed Greg Wilson a draft approval letter from the Technical Committee. Mr. Sticka indicated that once both directors reviewed and signed the letter Mr. Wilson would receive a copy in the mail. (Exhibit 10: C-10, September 21, 2017 email from Ben Sticka to Greg Wilson attaching draft Technical Committee approval letter). On September 22, 2017, Karen Anderson, Planning Director, sent an email to the Mayor of Redmond in response to a resident’s inquiry about the extension request and indicated the following: “Yes. Steve will be responding back to today with the information about the extension of the original project recently approved by the Technical Committee. . . .” (Exhibit 11: C-11. September 20 through 22, 2017 emails among Laura Chan, Redmond resident; John Marchione, Mayor of Redmond; Karen Anderson, Director of Planning and Community Development; Ben Sticka, Planner; and Steven Fischer, Planning Manager).

On November 8, 2017, Ben Sticka, Planner sent an email to Greg Wilson, Applicant indicating the following: “I have an answer regarding the extension of LAND-2013-01720. A Notice of Application will be sent out for the extension of LAND-2013-00720, including a 21 comment [sic] period. After that 21 day period, the project will be taken back to the Technical Committee and a decision will be rendered, followed by an appeal period. Please let me know if you have any additional questions? Thank you.” (Exhibit 12: C-12. November 8, 2017 email from Ben Sticka to Greg Wilson regarding notice of application for extension request).

Three days later, staff completed its analysis and prepared a Notice of Application on November 13, 2017 with a comment period that ended December 4, 2017 (Exhibit 6: C-6. November 13, 2017 notice of application for Wilmoor extensions request). During the comment period, staff received six comments. Upon completion of the comment period, staff completed its analysis

and presented its findings to the Technical Committee at their December 6, 2017 meeting (Exhibit 6: C-6. November 13, 2017 notice of application for Wilmoor extensions request).

On December 6, 2017, the Technical Committee denied the request for an extension (Exhibit 13: C-13. Meeting minutes for December 6, 2017 Technical Committee meeting). The denial was based upon the letter submitted by Greg Wilson (Exhibit 14: C-14. December 6, 2017 letter from Greg Wilson to Ben Sticka confirming purchase and sale agreement between Wilmoor and Toll WA LP.), which demonstrated to the Technical Committee that he was unable to demonstrate compliance with any decision criteria listed in Redmond Zoning Code (RZC 21.76.090) (Exhibit 3: C-3. September 18, 2017 site plan entitlement approval letter and notice of decision). On December 8, 2017, the City of Redmond, Planning Department, notified Wilmoor Development Corporation that the request for extension of the Site Plan Entitlement (LAND-2013-01720) had been denied by the Technical Committee. The letter indicated: "The Technical Committee has denied granting your request for an extension to December 8, 2018, as you fail to meet any of the four conditions above." (Exhibit 4: C-4. December 8, 2017 Denial of extension request letter from City to Wilmoor).

### **JURISDICTION**

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

### **BURDEN OF PROOF**

The burden of proof for demonstrating that the City's decision to issue the denial of the expiration of Site Plan Entitlement (LAND-2013-01720) letter on December 8, 2017 was in error lies on the appellant, as outlined in Hearing Examiner Pro-Tem's Rules, Burden of Proof.

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

The appellant has appealed the denial of the Applicant's extension request for its Site Plan Entitlement (LAND-2013-01720) letter on December 8, 2017. (Exhibit 4: C-4. December 8, 2017 Denial of extension request letter from City to Wilmoor). The appeal is based upon the following assertions:

1. The City erred in its decision on the extension request. The extension qualifies under both (c) and (d). Extension criteria found in RZC 21.76.090 letter (c) unanticipated construction and/or site design problems and (d) other circumstances beyond the control of the applicant determined acceptable by the approval authority.
2. The applicant has been working with Toll WA LP (aka, Toll Brothers) and City staff on site feasibility analysis regarding a new SPE application for the property to resolve unanticipated design problems.
3. This new application has encountered delays at the City planning level which are beyond the control of the applicant.
4. These substantial efforts to make progress on the entitlements should qualify this approved SPE for a one-year extension.

### **RELIEF SOUGHT BY APPEAL**

The appellant is seeking the following relief through this appeal:

1. The Hearing Examiner Pro-Tem should direct City staff to approve the extension request of the Rose Hill Cottages Site Plan Entitlement (LAND-2013-01720), (Exhibit 3: C-3. September 18, 2017 site plan entitlement extension request letter from Wilmoor to City).

### **ANALYSIS**

- 1. The City did not err in its decision to deny the extension request because the applicant has not demonstrated that it is entitled to an extension under any of the four extension criteria under RZC 21.76.090.C.2.**

Under RZC.76.090.C.2, an applicant can qualify for a permit extension if it satisfies one of four criteria: (a) Economic hardship; (b) change of ownership; (c) unanticipated construction and/or site design problems; (d) other circumstances beyond the control of the applicant determined acceptable by the Technical Committee. Appellant has argued that it qualifies for criteria (c) or (d). Appellant does not qualify for either of these criteria.

#### **a) Economic Hardship**

First, economic hardship has not been demonstrated by the applicant. The applicant has made no attempt to define an economic hardship. Therefore, there is no argument with regard to “economic hardship” as a criteria for granting of an extension. Second, a change of ownership has not occurred, as the applicant is only in discussions with Toll WA LP to sell their property.

A change of ownership has not yet occurred, as the applicant indicates that they are working with Toll Brothers. Staff has not yet seen a fully executed purchase agreement.

**b) Change of Ownership**

Second, King County Assessor indicates ME Bergstrom, LLC as the current property owner of the subject property (Exhibit 8: C-8. Screenshot of assessor information for Rose Hill Cottages parcel). This was also the ownership as shown on the application submitted on October 3, 2013 (Exhibit 1: C-1. December 21, 2017 Wilmoor appeal application and attachment). The purchase and sale agreement between Wilmoor and Toll Brothers is not a change in ownership, only a prospective change in ownership. Therefore, there is no argument regarding change of ownership as a criterion for granting an extension.

**c) Unanticipated Problems**

Third, unanticipated construction and/or site design problems have not been adequately identified by the applicant. The typical Type II application for a Site Plan Entitlement takes from start to finish 228 calendar days approximately (PREP, Formal Notice of Application comment period, Technical Committee approval, SEPA comment and appeal period, Notice of Decision routing for approval and Notice of Decision appeal period are all included in the 228 days). Beyond that timeframe the applicant has had two years from approval on December 8, 2015 in order to complete the entitlement process. The submitted materials for the subject appeal, fails to convey any communication and/or progress towards completing “unanticipated site design problems” has occurred. No evidence of a “site feasibility analysis” was also missing from the extension request and the subject appeal. With respect to a new Site Plan Entitlement, a request for a new Site Plan Entitlement is not one of the decision criteria listed as proper justification when granting approval of an extension. The applicant has failed to provide any evidence of unanticipated construction and/or site design problems and/or other circumstances beyond the control of the applicant, determined acceptable by the approval authority. The applicant has had two years since receiving approval from the Technical Committee for their Site Plan Entitlement, which was granted in December 8, 2015. During that time, the applicant has not demonstrated any efforts made through the coordinated civil review process, which is required as a next step after receiving an entitlement. The applicant failed to provide specific examples within their extension request or appeal to demonstrate compliance with this decision criteria. Therefore, they do not qualify for an extension under the unanticipated construction and/or site design problems criterion.

**d) Circumstances Beyond the Control of the Applicant**

Fourth, other circumstances beyond the control of the applicant, determined acceptable by the approval authority, have not been adequately identified in either the extension request or subject appeal. The applicant has failed to provide any evidence of their “delays at the City planning level”. No evidence has been provided to support these claims including emails, letters or any other correspondence with City employees that speaks to the alleged delays. Furthermore, no



delays from the City regarding Site Plan Entitlement (LAND-2013-01720) have taken place, as little communication has taken place. The applicant's justifications are based on those criteria being met through another permit entirely, but those alleged delays are not relevant to this appeal. Therefore, there is no argument regarding other circumstances beyond the control of the applicant determined acceptable by the Technical Committee as a criterion for granting an extension. In conclusion, none of the four decision criteria could be met in order to demonstrate conformance with the decision criteria, which resulted in denial of the extension request.

**2. The Technical Committee did not validly approve the extension request in its September 20, 2017 meeting.**

On September 20, 2017 the Technical Committee met to consider the Wilmoor extension request. The minutes from that meeting indicate that the Technical Committee "approved a one year extension request". (Exhibit 10: C-10, September 21, 2017 email from Ben Sticka to Greg Wilson attaching draft Technical Committee approval letter). For reasons more fully explained in the City's Response to Appellant's Pre-Hearing Brief, the Hearing Examiner cannot consider Appellant's arguments that the City validly approved its extension request on September 20, 2017 because the Appellant failed to raise that argument in its statement of appeal. Under RZC 21.76.060.I.2.ii, appellants must specify the "specific relief requested" in their appeal statements. Implicit in this requirement is the related concept that the scope of the appeal must be limited to those issues fairly raised in the appeal statement. In Appellant's appeal statement, its only basis for appeal was that "[t]his extension qualifies under both paragraphs (c) and (d)" of the extension criteria. Appellants failed to raise an "already-approved" argument in their appeal, and may not do so now.

Next, even if Appellant may raise its arguments about the September 20, 2017 Technical Committee meeting, those arguments fail because Technical Committee meetings are not final until a final approval letter is sent to the applicant, which never occurred in this case. And, even if a meeting alone, without an approval letter, were a final decision, the Technical Committee's decision could not have entered a valid decision on applicant's extension request because there had been no notice of application on the extension request as required under RZC 21.76.050.G.1. The decision of the Technical Committee at the September 20, 2017 meeting was therefore void.

**STAFF RECOMMENDATION**

Based on the analysis included in this report, staff recommends that the Hearing Examiner Pro-Tem deny the appeal of the appellants request to reverse the decision denying the request to grant the decision, which terminated Site Plan Entitlement (LAND-2013-01720), (Exhibit 4: C-4. December 8, 2017 Denial of extension request letter from City to Wilmoor.).

**CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION**

The appellant has the burden to prove that the City erred in denying extension of Site Plan Entitlement (LAND-2013-01720), (Exhibit 4: C-4. December 8, 2017 Denial of extension request letter from City to Wilmoor). The appellant has provided a statement and no evidence required to meet that burden and could not establish that the City erred procedurally or substantively in the denial of said land use permit. Furthermore, the applicant has failed to identify alleged errors and the manner in which the decision fails to satisfy the applicable decision criteria.



Karen Anderson, Director  
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Mike Paul, Deputy Director  
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