BEFORE THE HEARING EXAMINER FOR THE
CITY OF REDMOND

In the Matter of the Appeal of Aaron Hollingbery, on behalf of Toll WA LP Of an Administrative Interpretation	FILE NO. HEA-2018-02 Rosehill Cottages MOTION TO CONSOLIDATE HEARINGS

Appellant Toll (comprising Toll WA LP together with the owners of the underlying property) moves to consolidate the hearing on this appeal, which is scheduled to resume at 12:30 p.m. today, March 13, 2018, with the hearing on the new appeal that Appellant Toll has filed today, March 13, 2018. This motion is based on the following facts.

The Department issued the Administrative Interpretation that is the subject of this appeal on December 13, 2017, and Appellant Toll appealed this Interpretation on December 27, 2017.

On January 26, 2018 Toll filed a Request for Administrative Interpretation, and on Friday, March 9, 2018 the Department issued the requested Interpretation. This new Interpretation is identical to the December Interpretation except in its "Subject" line: the December Interpretation states that its subject is "Amending the definition of a Zoning Map Interpretation" and the March Interpretation states that its subject is Interpretation of a Zoning Map. The letter included with the new Interpretation then applies it to the Toll property.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

In light of the similarity of the two Interpretations, the evidence and issues on appeal will also be similar, and the parties will not be able to re-litigate issues decided in the first appeal. Toll believes it is in the interest of all parties to resolve these issues in one proceeding.

Yesterday, on March 12, 2018, the undersigned counsel spoke with the Redmond City Attorney, James E. Haney, and informed him that Toll would bring this motion.

The documents that comprise the City's March 9, 2018 Interpretation are enclosed with this motion, as is Toll's Appeal of that Interpretation filed earlier today.

DATED this 13th day of March, 2018.

FOSTER PEPPER PLLC

Patrick J. Schneider, WSBA #11957
1111 Third Avenue, Suite 3000
Seattle, WA 98101
(206) 447-4400
schnp@foster.com

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1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

CERTIFICATE OF SERVICE

I certify that on this date, I filed a copy of the Motion to Consolidate Hearings with the City of Redmond Hearing Examiner.

I also certify that on this date, a copy of the same document was sent to the following parties listed below in the manner indicated:

Cheryl D. Xanthos Clerk to the Hearing Examiner P.O. Box 97010 M/S 3NFN Redmond, WA 98073 cdxanthos@redmond.gov	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Efile/Email [X] Via US Mail, postage prepaid
Jim Haney, City Attorney Ogden Murphy Wallace 901 Fifth Avenue, Suite 3500 Seattle, WA 98164 jhaney@omwlaw.com	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via Email (per agreement) [X] Via US Mail, postage prepaid

Dated this 13th day of March, 2018, at Seattle, Washington.

/s/Suzanne Nelson
Suzanne Nelson

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

INTERPRETATION

From: Benjamin Sticka [mailto:bsticka@redmond.gov]
Sent: Friday, March 09, 2018 11:03 AM
To: Aaron Hollingbery <ahollingbery@tollbrothers.com>
Cc: Karen Anderson <kanderson@redmond.gov>; Steve Fischer <SFISCHER@REDMOND.GOV>
Subject: Administrative Interpretation follow-up

Aaron,

The City has updated its Interpretation of a Zoning Map, completed the requested administrative interpretation and completed a map. Please find those items attached, as a part of this email. Thank you.

Ben Sticka
Planner – City of Redmond
(425) 556-2470 – bsticka@redmond.gov

CityofRedmond
WASHINGTON

ADMINISTRATIVE INTERPRETATION

Section Reference: Article I, Section 21.04.020B of the Redmond Zoning Code (RZC) – Zoning Map Interpretation

Subject: Interpretation of a Zoning Map

Issue/Question: When considering Redmond Zoning Code 21.04.020B, how should the term "uncertainty" be applied?

RZC 21.04.020B Zoning Map Interpretations states: Where uncertainty exists as to the location of any boundaries of the zones as shown in RZC 21.04.020, Zoning Map, the following rules shall apply:

1. Where boundaries are indicated as following approximately the centerline of the streets, alleys, highways, railroads or watercourses, the actual centerlines shall be considered the boundaries;
2. Where boundaries are indicated as following approximate lot lines and are map scaled at not more than 20 feet from the lines, the actual lot lines shall be considered the boundaries;
3. Where the land is not subdivided or where a zone boundary divides a lot, the boundary shall be determined by map scaling unless the actual dimensions are noted on the map;
4. Where boundaries are indicated as following lines of ordinary high water, government or meander line, the lines shall be considered to be the actual boundaries, and, if they should change, the boundaries shall be considered to move with them;
5. Where a public right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property that merges with;
6. Where an area with one owner is divided into more than one zone, each portion of the property shall have the zone designation indicated, unless subsection B.2 applies;
7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.

Interpretation: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines. This significantly reduces the likelihood that uncertainty as to the location of zoning boundaries exists. The seven rules (1-7) only apply, if such uncertainty exists. If it does not, then they do not apply.

Reasons: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines.

Karen Anderson

Karen Anderson, Director
Department of Planning and Community Development

3-9-2018
Date

CityofRedmond
WASHINGTON

March 9, 2018

Toll Brothers Inc.
Attn: Mr. Aaron Hollingbery
9720 NE 120th Place, Suite 100
Kirkland, WA 98034

RE: Request for Administrative Interpretation

Dear Mr. Hollingbery:

Thank you for your letter dated January 26, 2018 requesting an Administrative Interpretation of Redmond Zoning Code (RZC 21.04.020B) as it applies to property located at King County parcel number (3426059071) known as the Rosehill Cottages Property.

The City prepared and adopted an Administrative Interpretation which was signed by the Planning Director on December 13, 2017 regarding properties that contain more than one zoning district. Currently, this interpretation is being heard by the Hearing Examiner Pro-Tem, as a part of your appeal. Since the creation of this interpretation, the City has reviewed the document, made a modification to its title to clarify that it did not constitute a code amendment and reissued the document on March 9, 2018. The City does not prepare Administrative Interpretations that are related to any specific property, but instead, any interpretation of the Code is broad-based and can be applied to all applicable sites across the City. With that said, I would like to take the opportunity to discuss the site.

The underlying zoning district is both R-1 (Single-Family Constrained Residential) and R-4 (Single-Family Urban Residential) as described within the Redmond Zoning Code (RZC) Sections 21.08.030 and 21.08.060. The R-1 (Single-Family Constrained Residential) zone provides for low-density residential at a base density of one dwelling per acre on lands inappropriate for more intense urban development due to significant environmentally critical areas, extreme cost, or difficulty in extending public facilities or the presence of natural features Redmond is seeking to retain. The R-4 (Single-Family Urban Residential) zone provides for primarily single-family residential neighborhoods on lands suitable for residential development with an allowed base density of four dwellings per gross acre. This designation provides for stable and attractive suburban residential neighborhoods that have a full range of public services and facilities. To complement the primarily residential nature of these zones, some nonresidential uses are allowed.

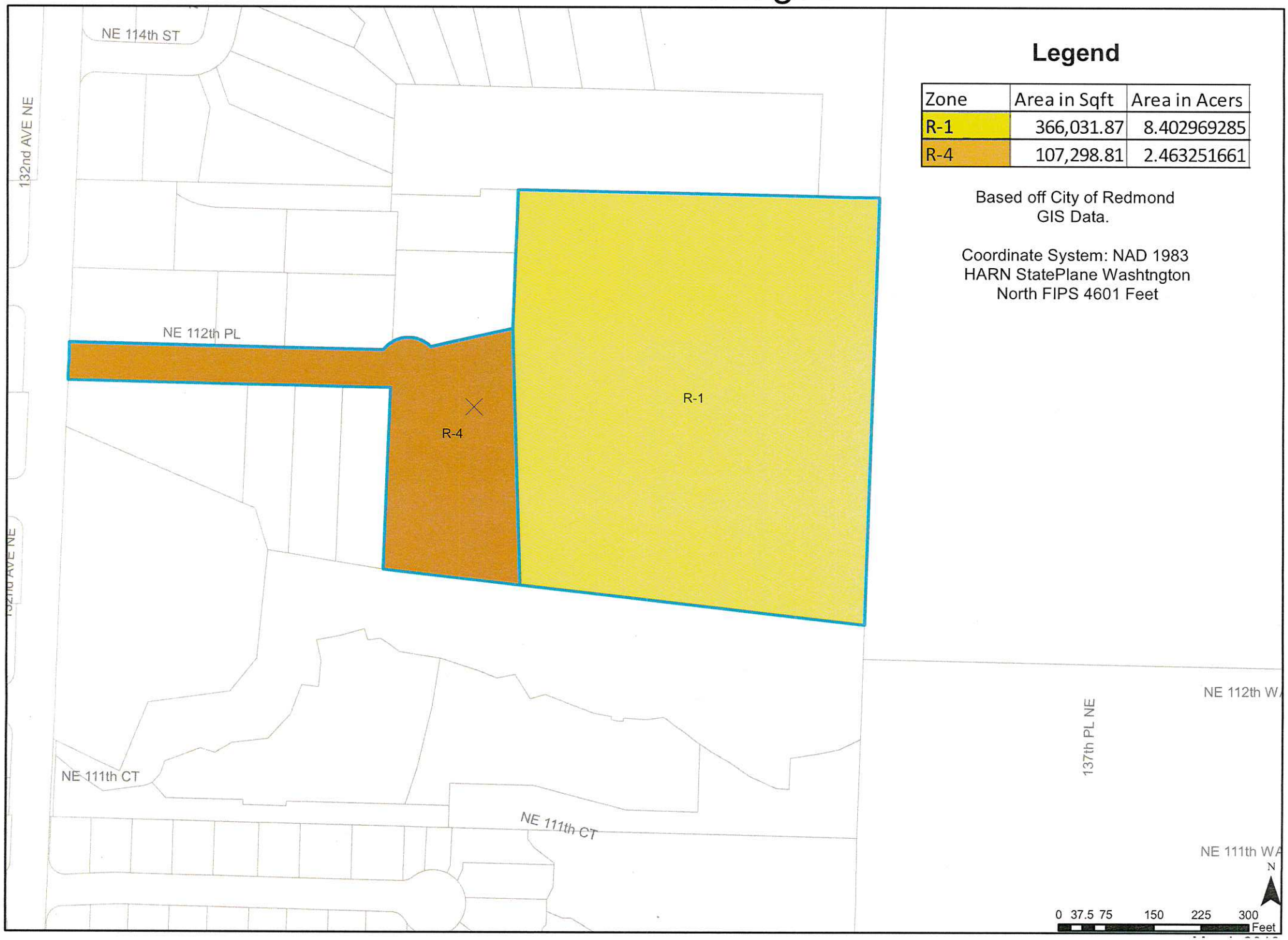
Using the City's geographic information systems database, staff was able to calculate the area of each zoning designation as follows: R-1 (Single-Family Constrained Residential) zone is 8.40 acres and R-4 (Single-Family Urban Residential) zone is 2.46 acres in size. The attached map shows this information in more detail.

If you have additional questions, I can be reached at (425) 556-2470 or via email at bsticka@redmond.gov.

Best Regards,

Ben Sticka, Planner
Planning Department
City of Redmond

Rose Hill Cottages



Legend

Zone	Area in Sqft	Area in Acers
R-1	366,031.87	8.402969285
R-4	107,298.81	2.463251661

Based off City of Redmond
GIS Data.

Coordinate System: NAD 1983
HARN StatePlane Washtngton
North FIPS 4601 Feet

APPEAL

CityofRedmond
WASHINGTON

CITY OF REDMOND

APPEAL APPLICATION FORM

(Staff Use Only)

File No: _____
Date Received: _____
Receipt No. _____

RECEIVED
CITY OF REDMOND
MAR 13 2018
HEARING EXAMINER
EX _____ FILE # _____

To file a land use appeal, please complete the attached form and pay the applicable appeal fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by PERSONAL DELIVERY at City Hall 2nd Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85th Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

Standing to Appeal:

- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. on the 14th calendar day following the date of the decision.
- **Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II)** - the project applicant, owner, City staff, or any party who appealed the department director's or Technical Committee's decision to the Hearing Examiner. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's reconsideration period.
- **Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III)** - the project applicant, owner, City staff, or any person who established themselves as a party of record prior to or at the public hearing. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.

Should the appellant prevail in the appeal, the appeal application fee will be refunded (City of Redmond Resolution No. 1459). The appeal application fee will not be refunded for appeals that are withdrawn or dismissed.

City Council decisions may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Please continue to page 2 to select your appeal type.

Please check the applicable appeal:

☐ Appeal to the Hearing Examiner of a SEPA decision *RZC 21.70.190(E).* ***(Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)***

☒ Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) *RZC 21.76.060(I)*

☐ Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II) *RZC 21.76.060(M)*

☐ Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III) *RZC 21.76.060(M)*

Section A. General Information

Name of Appellant: Toll WA LP - Attention Aaron Hollingbery

Address: 8815 122nd Avenue NE Suite 200

City: Kirkland State: WA Zip: 98033

Email: ahollingbery@tollbrothers.com

Phone: (home) _____ (work) 425-825-5310 (cell) 425-444-6891

Name of project that is being appealed: Attached Administrative Interpretation as applied to Rosehill Cottages

File number of project that is being appealed: LAND-2017-00727

Date of decision on project that is being appealed: 3/9/18 Administrative Interpretation

Expiration date of appeal period: 3/23/18

What is your relationship to the project?
☒ Party of Record ☒ Project Applicant ☐ Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

See Attachment A

Section B. **Basis for Appeal**

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision:

See Attachment A hereto.

2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria:

See Attachment A hereto.

If appealing a Hearing Examiner decision: Please provide the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed:

n/a

3. Please state the specific relief requested:

See Attachment A hereto.

4. Please provide any other information reasonably necessary to make a decision on the appeal:

See Attachment A hereto.

Do not use this form if you are appealing a decision on a:

- Shoreline Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(b)*)
- Shoreline Variance or a Shoreline Conditional Use Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(c)*)
- Hearing Examiner decision on a SEPA appeal (not an appealable action as successive appeals are not allowed *RZC 21.70.190(D)*)
- City Council approval or denial (must be appealed to Superior Court *RZC 21.76.060.Q*)

Attachment A

Toll's Appeal of the March 9, 2018 Administrative Interpretation of RZC 21.04.020.B

1. Please state the facts demonstrating how you are adversely affected by the decision

Toll WA LP requested the Administrative Interpretation on January 26, 2018. Toll WA LP is the project applicant and contract purchaser of the Rosehill Cottages Property. The owners of this Property are ME Bergstrom, LLC; Bernd Walters and Florence Walters, husband and wife; and Kjell Olsson. Collectively the owners and Toll WA LP are referred to herein as Toll.

The Interpretation is enclosed with this appeal as Exhibit 1. Also enclosed as part of Exhibit 1 are the documents that the Department sent to Toll with the Interpretation, in which the Department applies the Interpretation to the Property: the cover email from Benjamin Sticka; the March 9, 2018 letter from Mr. Sticka to Toll Brothers Inc.; and the map attached to Mr. Sticka's letter.

2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria

The Interpretation is erroneous, and fails to meet the decision criteria, because it is inconsistent with the Redmond Zoning Code and with the facts relevant to the Property, for all the reasons set forth in Toll's Request for Administrative Interpretation filed January 26, 2018. The Interpretation also is erroneous, and fails to meet the decision criteria, for all the reasons set forth in Toll's prior appeal of the December 13, 2017 Administrative Interpretation, which is included as Exhibit B to Toll's January 26, 2018 Request for Administrative Interpretation.

The Subject line of the March 9, 2018 Interpretation states "Interpretation of a Zoning Map," while the Subject line of the December 13, 2017 Interpretation states "Amending the definition of a Zoning Map Interpretation." The two Interpretations are otherwise identical and are erroneous for similar reasons.

The January 26, 2018 Request for Administrative Interpretation, which includes Toll's prior appeal, is enclosed with this appeal as Exhibit 2 to this Attachment, and is incorporated into this appeal by this reference.

3. Please state the specific relief requested

Toll requests that the Hearing Examiner find and conclude as a matter of fact and law that the Redmond zoning map does not provide certainty with regard to the zone boundary on the Toll Property. Toll requests that the Hearing Examiner invalidate the Interpretation and direct the Department to apply the text of RZC 21.04.020.B.7 to the Property to determine the zone boundary.

4. **Please provide any other information reasonably necessary to make a decision on the appeal.**

Additional information will be provided at the hearing on this Appeal, which Toll is moving to consolidate with the hearing on Toll's appeal of the January 26, 2018 Interpretation.

EXHIBIT 1

CityofRedmond
WASHINGTON

ADMINISTRATIVE INTERPRETATION

Section Reference: Article I, Section 21.04.020B of the Redmond Zoning Code (RZC) – Zoning Map Interpretation

Subject: Interpretation of a Zoning Map

Issue/Question: When considering Redmond Zoning Code 21.04.020B, how should the term "uncertainty" be applied?

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Interpretation: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines. This significantly reduces the likelihood that uncertainty as to the location of zoning boundaries exists. The seven rules (1-7) only apply, if such uncertainty exists. If it does not, then they do not apply.

Reasons: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines.

Karen Anderson

Karen Anderson, Director
Department of Planning and Community Development

3-9-2018
Date

CityofRedmond
WASHINGTON

March 9, 2018

Toll Brothers Inc.
Attn: Mr. Aaron Hollingbery
9720 NE 120th Place, Suite 100
Kirkland, WA 98034

RE: Request for Administrative Interpretation

Dear Mr. Hollingbery:

Thank you for your letter dated January 26, 2018 requesting an Administrative Interpretation of Redmond Zoning Code (RZC 21.04.020B) as it applies to property located at King County parcel number (3426059071) known as the Rosehill Cottages Property.

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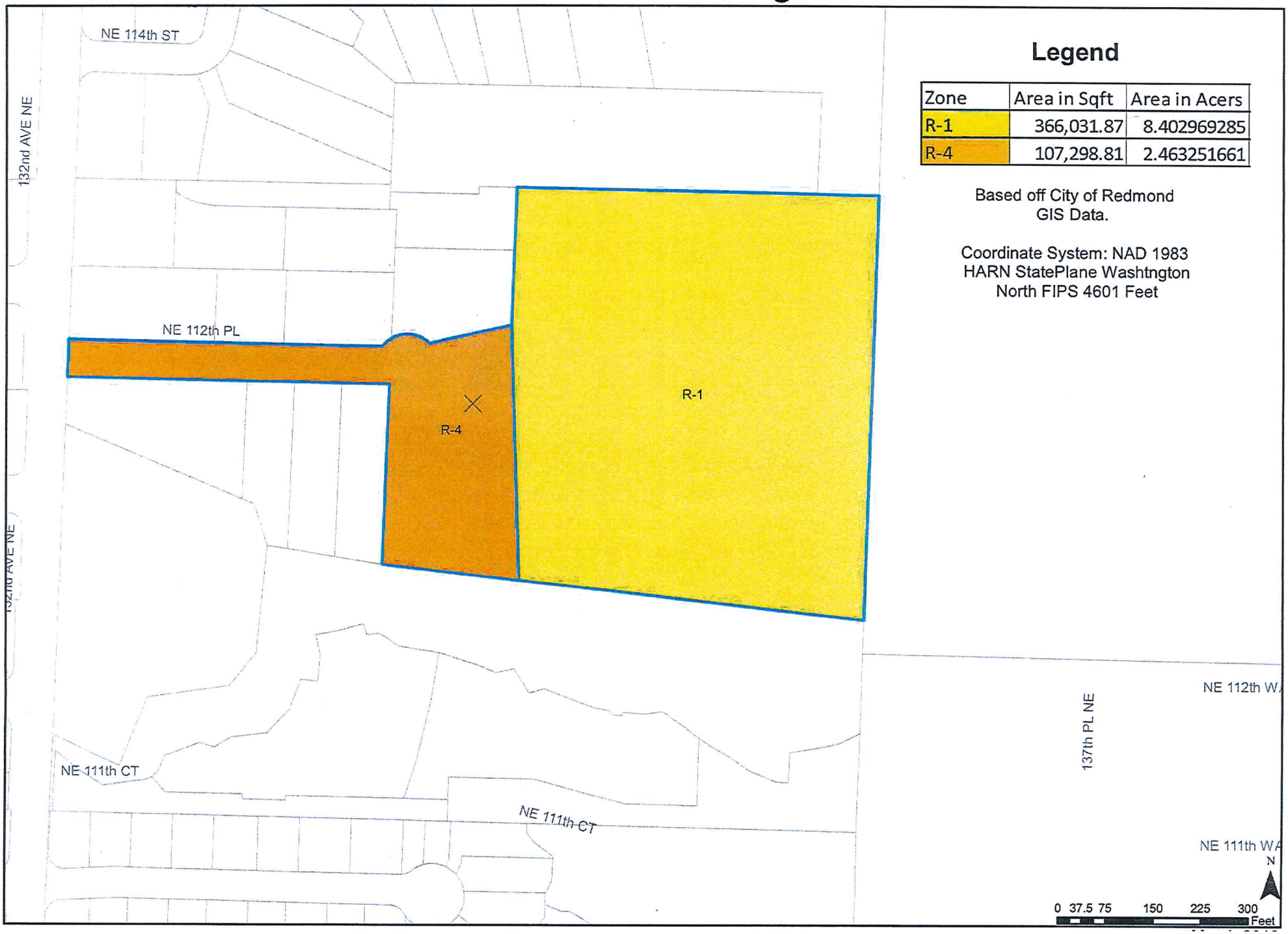
Using the City's geographic information systems database, staff was able to calculate the area of each zoning designation as follows: R-1 (Single-Family Constrained Residential) zone is 8.40 acres and R-4 (Single-Family Urban Residential) zone is 2.46 acres in size. The attached map shows this information in more detail.

If you have additional questions, I can be reached at (425) 556-2470 or via email at bsticka@redmond.gov.

Best Regards,

Ben Sticka, Planner
Planning Department
City of Redmond

Rose Hill Cottages



Legend

Zone	Area in Sqft	Area in Acers
R-1	366,031.87	8.402969285
R-4	107,298.81	2.463251661

Based off City of Redmond
GIS Data.

Coordinate System: NAD 1983
HARN StatePlane Washtngton
North FIPS 4601 Feet

From: Benjamin Sticka [mailto:bsticka@redmond.gov]
Sent: Friday, March 09, 2018 11:03 AM
To: Aaron Hollingbery <ahollingbery@tollbrothers.com>
Cc: Karen Anderson <kanderson@redmond.gov>; Steve Fischer <SFISCHER@REDMOND.GOV>
Subject: Administrative Interpretation follow-up

Aaron,

The City has updated its Interpretation of a Zoning Map, completed the requested administrative interpretation and completed a map. Please find those items attached, as a part of this email. Thank you.

Ben Sticka
Planner – City of Redmond
(425) 556-2470 – bsticka@redmond.gov

EXHIBIT 2

RECEIVED
CITY OF REDMOND
JAN 29 2018
DEVELOPMENT
SERVICES CENTER

FOSTER PEPPER PLLC

Direct Phone (206) 447-2905
Direct Facsimile (206) 749-1915
pat.schneider@foster.com

January 26, 2018

By Email and Hand Delivery

Ms. Karen Anderson
Director, Department of Planning and Community Development
City of Redmond
15670 NE 85th Street
P. O. Box 97010
Redmond, WA 98073-9710

Re: Request for Administrative Interpretation regarding the meaning of RZC 21.04.020.B and its application to the Rosehill Cottages Property – King County Parcel 3426059071

Dear Ms. Anderson:

Please accept this letter as the application by Toll WA LP ("Toll") for an Administrative Interpretation of RZC 21.04.020.B as applied to the property referenced above ("Rosehill Cottages Property"). Toll applies for this Interpretation pursuant to RZC 21.76.070.D and 21.76.100.D.

The Rosehill Cottages Property is an undeveloped 10.85 acre parcel, with the eastern portion in the R-1 zone and the western portion in the R-4 zone. The parcel includes steep slopes, a stream, and wetlands, all of which are regulated by the City as critical areas.

PROCEDURAL BACKGROUND TO THIS REQUEST

Attached to this request as Exhibit A is the Administrative Interpretation that you, as Code Administrator, issued on December 13, 2017 ("December Interpretation"), three days after representatives of Toll met with you to discuss the location of the boundary between the R-1 and R-4 zones on the Rosehill Cottages Property. Benjamin Sticka emailed this December Interpretation to Toll's Vice-President, Aaron Hollingbery, on the same day it was issued, and Toll appealed this December Interpretation on December 27, 2017. A copy of the appeal of the December Interpretation is attached as Exhibit B and incorporated into this request.

On December 15, 2017, you wrote to Aaron Hollingbery to tell him that Toll could not appeal the December Interpretation because Toll had not submitted an application for the December Interpretation. Your email concluded by stating that "Ben [Sticka] would be happy to assist you in filing an application for an administrative interpretation pursuant to RZC 21.76.070.D.3."

Toll filed its appeal on December 27th because Toll could not risk waiving its right to challenge an interpretation that states how the Department will determine the zoning boundary on the Rosehill Cottages Property. To ensure that the issues raised by the December Interpretation are promptly resolved, however, Toll also is following your suggestion that Toll apply for a new interpretation of the meaning of RZC 21.04.020.B as applied to the Rosehill Property. This letter constitutes that application.

For the reasons summarized below, Toll asks the Code Administrator to issue a new interpretation that states that the boundary between the R-1 and R-4 zones on the Rosehill Cottages Property follows "the outermost boundary of the critical area buffer," as stated in RZC 21.04.020.B.7. Toll also requests that the Administrator withdraw the December Interpretation.

REQUESTED INTERPRETATION

Toll has advised the City that the R-4/R-1 zoning boundary on the Rosehill Cottages Property as depicted on the City's Zoning Map is uncertain and that Rule 7 of RZC 21.04.020.B should be applied to locate the boundary. RZC 21.04.020B.7 states:

> 7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.

The December Interpretation concludes that there will never be uncertainty as to the location of a zoning boundary requiring the application of RZC 21.04.020.B because property boundaries can be scaled using the City's geographic information systems ("GIS") database. It states:

> The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines. . . .

The City's Zoning Code provides for Administrative Interpretations in both RZC 21.76.070.D and 21.76.100.D. The wording of these two sections is somewhat different, but the substance is similar. RZC 21.76.070.D.1 sets out the purpose of an administrative interpretation:

> The primary objective of administrative interpretation is to ascertain the intent of the code provision at issue and to give effect to that intent. Administrative interpretation shall not be used to amend or change the code.

Both RZC 21.76.070.D.4.c and 21.76.100.D.4 state:

> Interpretation of the Official Zoning Map shall be as set forth in RZC 21.04.020.B.

Both sections also state:

> In the case of conflicts between the text, maps, and charts of the RZC, the text shall govern unless otherwise stated.

RZC 21.76.070.D.4.d and 21.76.100.D.5.

The subject line of the December Interpretation is "Amending the definition of a Zoning Code Interpretation," and it is clearly intended to amend RZC 21.04.020.B, which sets out seven rules that must be followed when uncertainty exists as to a zoning boundary as shown on the Zoning Map. The December Interpretation amends this code provision by concluding there can never be uncertainty as to a zoning boundary because boundaries can be scaled by using GIS data. The December Interpretation therefore violates RZC 21.76.070.D.1 which states that administrative interpretations shall not be used to amend or change the code.

The December Interpretation is also inconsistent with the City's Official Zoning Map. The Zoning Map does not include a scale and it contains the following express disclaimer as to the accuracy of the Zoning Map:

> This map is a general representation. The City of Redmond does not warrant precise boundaries. . . .

The R4/R1 zoning boundary of the Rosehill Cottages Property as shown on the official Zoning Map is uncertain. "Certain" is defined as "known for sure, established beyond doubt, unquestionable, sure, definite, beyond question, not in doubt, indubitable; undeniable, irrefutable, indisputable." The zoning boundary as depicted on the Zoning Map is a relatively thick, jagged line located on a map that has no scale. Toll's surveyor and technical planner could not ascertain the boundary location using the Zoning Map.

The reliance on the City's GIS data in the December Interpretation is contrary to the unambiguous language of RZC 21.040.020 which does not refer to the GIS as being part of the City's official Zoning Map, nor does this code section include the GIS as part of any of the seven Rules of interpretation to be applied when a zoning boundary is uncertain. Furthermore, the GIS Property Viewer contains a disclaimer similar to that on the official Zoning Map as to accuracy:

> Information shown on the Property Viewer is derived from public records that are constantly undergoing change and do not replace a site survey. Data and records are not warranted for content or accuracy. The City does not guarantee the positional or thematic accuracy of the GIS data. The GIS data or cartographic

> digital files are not a legal representation of any of the features that it depicts, and disclaims any assumption of the legal status of which it represents. . . .

The assertion in the December Interpretation that the GIS system is accurate is directly contrary to the GIS system's warning to the public that the information it contains is not warranted for accuracy and does not replace a survey.

RZC 21.04.020.B acknowledges the uncertainty of the information provided by zoning maps, and provides textual standards for resolving this uncertainty. As quoted above, RZC 21.76.070.D.4.c and 21.76.100.D.4 both state that the text of the Zoning Code governs when there is conflict between text and maps.

RZC 21.04.020.B.7 addresses the specific situation that exists when a zone boundary does not follow a property line, when one of the zones is R-1, and when critical areas exist on the property:

> 7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.

This is the situation at the Rosehill Cottages Property, and subsection 020.B.7 states the City Council's determination of how the zone boundary on such property is to be determined. The December Interpretation cannot be reconciled with subsection 020.B.7.

As quoted above, an administrative interpretation cannot be used to amend or change the City's code. RZC 21.76.070.D.1. It is also a fundamental principal of law that an administrative agency's interpretation of a regulation it administers must be consistent with that regulation and the policy choice underlying that regulation. *Moses v. State, Dep't of Soc. and Health Servs.*, 90 Wn.2d 271, 274, 581 P.2d 152, 153 (1978). In addition, an interpretation must give effect to all of the terms of a regulation, *State, Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627, 636 (2002), and a specific regulation prevails over a more general regulation. *See Chinn v. City of Spokane*, 173 Wn. App. 89, 95, 293 P.3d 401, 404 (2013); *Pannell v. Thompson*, 91 Wn.2d 591, 597, 589 P.2d 1235, 1239 (1979).

RZC 21.76.070.D.5 requires the Administrator to abide by all these recognized principles of interpretation:

> 5. Administrative interpretation shall utilize generally recognized principles of statutory and ordinance interpretation adopted by the courts of this state.

The December Interpretation is inconsistent with generally recognized principles of construction, while the interpretation requested by this application is consistent with such principles.

The December Interpretation is also inconsistent with the manner in which the City applied RZC 21.04.020.B to a similarly situated project approved in August of 2015 (Terrene 132nd Preliminary Plat, Permit # LAND-2014-02307). That project is located on a single parcel with split R-4/R-1 zoning just one property south of the Rosehill Cottages Property. The City applied RZC 21.04.020.B.7 to the parcel and located the zoning boundary on the outermost boundary of the critical area buffer.

For the reasons set forth above, and also for the reasons stated in Toll's appeal of the December Interpretation to the Hearing Examiner, Toll asks the Code Administrator to issue a new Administrative Interpretation of RZC 21.04.020.B that recognizes that when split-zoned property is partially zoned R-1 and also contains critical areas, as at the Rosehill Cottages Property, that the zone boundary follows the outermost boundary of the critical area buffer.

Thank you for your consideration of this application, and please let me know if I can provide you with additional information about the Rosehill Cottages Property.

Sincerely,

Pat Schneider

Patrick J. Schneider

Exhibit A: Administrative Interpretation dated December 13, 2017
Exhibit B: Toll Appeal of December Interpretation

cc: Benjamin Sticka
Jim Haney
Aaron Hollingbery
Marsha Martin

Exhibit A

City of Redmond
WASHINGTON

ADMINISTRATIVE INTERPRETATION

Section Reference: Article I, Section 21.04.020B of the Redmond Zoning Code (RZC) – Zoning Map Interpretation

Subject: Amending the definition of a Zoning Map Interpretation

Issue/Question: When considering Redmond Zoning Code 21.04.020B, how should the term "uncertainty" be applied?

RZC 21.04.020B Zoning Map Interpretations states: Where uncertainty exists as to the location of any boundaries of the zones as shown in RZC 21.04.020, Zoning Map, the following rules shall apply:

1. Where boundaries are indicated as following approximately the centerline of the streets, alleys, highways, railroads or watercourses, the actual centerlines shall be considered the boundaries;
2. Where boundaries are indicated as following approximate lot lines and are map scaled at not more than 20 feet from the lines, the actual lot lines shall be considered the boundaries;
3. Where the land is not subdivided or where a zone boundary divides a lot, the boundary shall be determined by map scaling unless the actual dimensions are noted on the map;
4. Where boundaries are indicated as following lines of ordinary high water, government or meander line, the lines shall be considered to be the actual boundaries, and, if they should change, the boundaries shall be considered to move with them;
5. Where a public right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property that merges with;
6. Where an area with one owner is divided into more than one zone, each portion of the property shall have the zone designation indicated, unless subsection B.2 applies;
7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.

Interpretation: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines. This significantly reduces the likelihood that uncertainty as to the location of zoning boundaries exists. The seven rules (1-7) only apply, if such uncertainty exists. If it does not, then they do not apply.

Reasons: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines.

Karen Anderson

Karen Anderson, Director
Department of Planning and Community Development

12-13-2017
Date

Exhibit B

(Staff Use Only)

File No: _____
Date Received: _____
Receipt No. _____

CITY OF REDMOND

APPEAL APPLICATION FORM

To file a land use appeal, please complete the attached form and pay the applicable appeal fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by PERSONAL DELIVERY at City Hall 2nd Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85th Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

Standing to Appeal:

- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. on the 14th calendar day following the date of the decision.
- **Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II)** - the project applicant, owner, City staff, or any party who appealed the department director's or Technical Committee's decision to the Hearing Examiner. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's reconsideration period.
- **Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III)** - the project applicant, owner, City staff, or any person who established themselves as a party of record prior to or at the public hearing. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.

Should the appellant prevail in the appeal, the appeal application fee will be refunded (City of Redmond Resolution No. 1459). The appeal application fee will not be refunded for appeals that are withdrawn or dismissed.

City Council decisions may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

RECEIVED
DEC 27 2017
CITY OF REDMOND
CITY CLERK

Please continue to page 2 to select your appeal type.

Please check the applicable appeal:

☐ Appeal to the Hearing Examiner of a SEPA decision *RZC 21.70.190(E).* ***(Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)***

☒ Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) *RZC 21.76.060(I)*

☐ Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II) *RZC 21.76.060(M)*

☐ Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III) *RZC 21.76.060(M)*

Section A. General Information

Name of Appellant: Toll WA LP - Attention Aaron Hollingbery

Address: 9720 NE 120th Pl. Suite 100

City: Kirkland State: WA Zip: 98034

Email: ahollingbery@tollbrothers.com

Phone: (home) _____ (work) 425-825-5310 (cell) 425-444-6891

Name of project that is being appealed: Attached Administrative Interpretation-appealing as facially invalid and as applied to Rosehill Cottages (LAND-2017-00727)

File number of project that is being appealed: _____

Date of decision on project that is being appealed: 12/13/17 Administrative Interpretation

Expiration date of appeal period: 12/27/17

What is your relationship to the project?

☒ Party of Record ☒ Project Applicant ☐ Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

See Attachment A.

Section B. Basis for Appeal

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision:

See Attachment A hereto.

2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria;

See Attachment A hereto.

If appealing a Hearing Examiner decision: Please provide the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed:

3. Please state the specific relief requested:

See Attachment A hereto.

4. Please provide any other information reasonably necessary to make a decision on the appeal:

See Attachment A hereto.

Do not use this form if you are appealing a decision on a:

- Shoreline Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(b)*)
- Shoreline Variance or a Shoreline Conditional Use Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(c)*)
- Hearing Examiner decision on a SEPA appeal (not an appealable action as successive appeals are not allowed *RZC 21.70.190(D)*)
- City Council approval or denial (must be appealed to Superior Court *RZC 21.76.060.Q*)

Attachment A
To Toll WA LP Application for Appeal Regarding
Administrative Interpretation of
RZC 21.04.020.B

Standing

Toll WA LP is the Rosehill Cottages project applicant and contract purchaser of the Rosehill Cottages property. The Rosehill Cottages property is a single parcel that is split between the R-4 and R-1 zones. A portion of the parcel contains critical areas. RZC 21.04.020.A states in part: "*The designation, location and boundaries of the zones established by RZC 21.04.010.A.2 are as shown and depicted on the Zoning Map(s) of the City . . . Zoning for all land within the City of Redmond is established as shown on the Official Zoning Map.*" RZC 21.040.020.B sets the rules for interpreting the Zoning Map "*where uncertainty exists as to the location of any boundaries of the zones as shown in RZC 21.04.020, Zoning Map*".

Toll WA LP ("Toll" or "Applicant") believes that the location of the R-4/R-1 zoning boundary is uncertain and that the boundary location rules set out in RZC 21.04.020.B apply. After meeting with the City on 12/8/17 to discuss the issue and advising staff that Toll might file a request for an Administrative Interpretation, the Director of Planning and Community Development issued an Administrative Interpretation on 12/13/17 which was emailed to Toll on the same day. (See **Exhibit 1** attached hereto.) The Interpretation concludes there can never be uncertainty as to a zoning boundary because "*the Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer*" and "*measurements can be easily scaled from this data to determine boundary lines.*" In fact, the Administrative Interpretation subject line states: "*Amending the definition of a Zoning Map Interpretation*", and appears intended to constitute a code amendment to RZC 21.04.020.B. The City issued this pre-emptive Administrative Interpretation without the opportunity for Toll to request an Administrative Interpretation which would have included the factual and legal basis for such request.

1. **Please state the facts demonstrating how you are adversely affected by the decision:**

   The correct location of the zoning boundary for the Rosehill Cottage development is necessary to ensure that the project complies with the Redmond Zoning Code. The location of the zoning boundary affects multiple aspects of the project, including the density calculation for the cottage development.

   The Rosehill Cottages property is a single undeveloped 10.85 acre parcel a portion of which is in the R-4 zone and a portion of which is in the R-1 zone. There are critical areas on the site consisting of steep slopes, a stream and a wetland. The determination of the location of the zoning boundary cannot be determined from the Zoning Map. The current official Redmond Zoning Map delineated as "Revised 10/17/2015" contains no scale. (The Zoning Map accessible through the online RZC has a revision date of 5/18/15). The Zoning Map contains the following disclaimer, which is also found on prior versions of the Zoning Map:

   > *This map is a general representation. The City of Redmond does not warrant precise boundaries. Maps may not fully reflect the most recent policy updates. Please consult with Planning and Community Development for zoning verification or specific zoning questions.*

When Toll undertook its initial feasibility review for the acquisition of the property, neither Toll's surveyor nor Toll's in-house technical planner could accurately ascertain the location of the zoning boundary utilizing the Zoning Map or other available data, including the City's geographic information system (GIS) data, with any reasonable degree of certainty. Toll engaged the same engineering firm used by the property owner for the property owner's 2015 Site Plan Entitlement ("SPE") approval (Permit # LAND-2013-01720) to create the submittal drawings for Toll's cottage development application. Toll subsequently discovered that its consultant failed to apply RZC 21.04.020.B.7 because they were unaware of that code provision. They set the zoning boundary line in the same location as the prior approved SPE. When Toll became aware that its consultant did not apply RZC 21.04.020.B.7, Toll advised the City that based upon its review of the Zoning Map the zoning boundary could not be determined with any reasonable degree of certainty and that RZC 21.04.020.B.7 applied to the site. RZC 21.04.020.B.7 states:

> *7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.*

The City took the issue under review. Toll then met with the City on December 8th to discuss the issue. At the meeting, Toll provided copies of a project approved in August of 2015 (Terrene 132nd Preliminary Plat, Permit # LAND-2014-02307) with facts virtually identical to the Rosehill Cottages Property. That project is located on a single parcel with split R-4/R-1 zoning just one property south of the Rosehill Cottages project. The City applied RZC 21.04.020.B.7 to the parcel and located the zoning boundary on the outermost boundary of the critical area buffer. Toll pointed out that the Zoning Map did not contain a scale and the zoning boundary could not be located with certainty. Toll also raised the possibility that Toll might request an Administrative Interpretation. On December 13th, the project planner sent an email to Aaron Hollingbery with the 12/13 Administrative Interpretation attached. (See **Exhibit 1** hereto.)

2. **Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria:**

(1) <u>The 12/13/17 Administrative Interpretation is Subject to Appeal by the Applicant.</u>

The City advised the Applicant in an email from Karen Anderson to Aaron Hollingbery dated 12/15/17, that, although the 12/13 Administrative Interpretation pertains directly to the Rosehill Cottages project and was sent directly to the Applicant by the project planner, it is not subject to appeal by the Applicant because the Applicant did not specifically request an Administrative Interpretation. (See **Exhibit 2** attached hereto.) The Applicant believes that the City's position is an error of law and procedure and the Administrative Interpretation is subject to appeal.

The RZC addresses Administrative Interpretations in RZC 21.76.070.D which is set out at the end of this Question 2. (RZC 21.76.100.D also addresses Administrative Interpretations in almost identical language.) RZC 21.76.070.D.3 provides that the Code Administrator shall be responsible for interpreting the provisions of this code, except where expressly provided otherwise. The Planning Director issued the 12/13 Administrative Interpretation in direct response to Toll's assertion in a 12/8 meeting with the City that the R-4/R-1 zoning boundary as set out on the Zoning Map was uncertain and that the split zoning rule in RZC 21.04.020.B.7

should be applied. In that meeting, Toll stated it might seek an Administrative Interpretation. The City sent the Administrative Interpretation via an email to Toll on the same date it was issued.

The issuance of this Administrative Interpretation puts Toll in an untenable position. If Toll does not appeal the Interpretation, it faces an argument in a potential future appeal of its project that Toll waived its right to dispute that the City erred in locating the R-4/R-1 zoning boundary because Toll failed to file a timely appeal of the 12/13 Administrative Interpretation. Even if Toll applies for a separate code interpretation, the appeals clock continues to run on the 12/13 Administrative Interpretation. The City would also most certainly rely on the 12/13 Administrative Interpretation in responding to an interpretation request from Toll.

In addition, RZC 21.76.070.D does not, despite the City's position to the contrary, differentiate between an Administrative Interpretation issued at the request of a third party and an Administrative Interpretation issued by the City without a formal request from a third party, but clearly in response to an issue raised by that party and impacting that third party and its property rights. Table 21.76.050.B lists Administrative Interpretations as a Process I type decision. Once issued, the Administrative Interpretation is appealable by a party with standing.

RZC 21.76.070 Land Use Actions and Decision Criteria
D. Administrative Interpretation.

1. *Purpose. The purpose of this section is to provide for the interpretation of the Zoning Code. The primary objective of administrative interpretation is to ascertain the intent of the code provision at issue and to give effect to that intent. Administrative interpretation shall not be used to amend or change the code.*
2. *Scope. The RZC shall be interpreted whenever any of its provisions, or the application of such provisions to any specific set of circumstances, is ambiguous; i.e., where the Code is subject to two or more reasonable interpretations.*
3. *Procedures. The Code Administrator shall be responsible for interpreting the provisions of this code, except where expressly provided otherwise. Any interested person may apply for an interpretation of this code. Applications for administrative interpretation are processed as Type I reviews.*
4. *Decision Criteria.*
    a. *The provisions of the RZC shall be considered to be the minimum requirements adopted for the promotion and protection of the public health, safety, and general welfare, and all administrative interpretations shall be made in this context.*
    b. *The RZC is not intended to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties, except where the agreements may conflict with the enforcement of the RZC.*
    c. *In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, resolutions, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and charts of the RZC, the text shall govern unless otherwise stated.*
    d. *Interpretation of the Official Zoning Map shall be as set forth in RZC 21.04.020.B.*

e. *Interpretation of the Redmond Comprehensive Plan is to be made recognizing that the boundaries of the plan categories are not exact but illustrate general relationships and locations.*

5. *Administrative interpretation shall utilize generally recognized principles of statutory and ordinance interpretation adopted by the courts of this state.*

(2) <u>The 12/13 Administrative Interpretation violates RZC 21.76.070.D.1.</u>

RZC 21.76.070.D.1 provides:

> *Purpose. The purpose of this section is to provide for the interpretation of the Zoning Code. The primary objective of administrative interpretation is to ascertain the intent of the code provision at issue and to give effect to that intent.* ***Administrative interpretation shall not be used to amend or change the code.***

The 12/13 Administrative Interpretation subject line states: "***Amending the definition of a Zoning Map Interpretation***". It clearly is intended to revise RZC 21.04.020.B which specifically sets out 7 rules that must be followed in interpreting the Zoning Map. The Administrative Interpretation renders the 7 rules meaningless by *de facto* concluding there can never be uncertainty as to a zoning boundary because "*the Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer*" and "*measurements can be easily scaled from this data to determine boundary lines.*" This Administrative Interpretation violates RZC 21.76.070.D.1 which prohibits using an Administrative Interpretation to amend or change the code.

(3) <u>The Conclusion of the Administrative Interpretation is Inconsistent with the City's Disclaimers relating to the Accuracy of the Zoning Map and the City's GIS mapping.</u>

As noted above, the City's Zoning Map contains a disclaimer that the map is only a general representation and does not warrant boundaries. The Administrative Interpretation relies on the accuracy of the City's GIS information as the basis to render the 7 Zoning Map rules of interpretation in RZC 21.04.020.B as no longer necessary. However, the City's GIS website also has a similar disclaimer:

> *Information shown on the Property Viewer is derived from public records that are constantly undergoing change and do not replace a site survey. Data and records are not warranted for content or accuracy. The City does not guarantee the positional or thematic accuracy of the GIS data. The GIS data or cartographic digital files are not a legal representation of any of the features that it depicts, and disclaims any assumption of the legal status of which it represents. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded.*

Ample evidence can be offered as to the accuracy of GIS mapping, which, as is evident from the disclaimer, is only as accurate as all of the underlying data used for the mapping. This is why surveyors are still necessary and why ambiguity still exists.

(4) <u>The City Did Not Follow the Decision Criteria of RZC 21.76.070.D.4.</u>

RZC 21.76.070.D.4. sets out the decision criteria for an Administrative Interpretation. The 12/13 Administrative Interpretation violates subsections c. and d. thereof which state:

> *c. In the case of conflicts between parts of the RZC or between the RZC and other rules, regulations, resolutions, ordinances, or statutes lawfully adopted by other authority having jurisdiction within the City, the most restrictive shall govern. In the case of conflicts between the text, maps, and charts of the RZC, the text shall govern unless otherwise stated.*
>
> *d. Interpretation of the Official Zoning Map shall be as set forth in RZC 21.04.020.B.*

A Code Interpretation must follow the code criteria for making the interpretation. The 12/13 Code Interpretation did not follow RZC 21.76.070.D.4 subsections c. and d. Subsection c. provides that in the case of a conflict between text and maps of the RZC the text shall govern unless otherwise stated. In this case, the City opted to use a GIS mapping system that is not even referenced in the Zoning Code instead of following the textual rules of Interpretation as required by both subsections c. and d. Subsection d. explicitly requires that "*Interpretation of the Official Zoning Map shall be as set forth in RZC 21.04.020.B*".

(5) <u>Uncertainty Exists as to the R-4/R-1 Zoning Boundary on the Rosehill Cottages Property.</u>

"Certain" is defined as follows:

> *Certain - known for sure, established beyond doubt unquestionable, sure, definite, beyond question, not in doubt, indubitable; undeniable, irrefutable, indisputable*

The R-4/R-1 zoning boundary on the Redmond Zoning Map is clearly uncertain. It is a relatively thick, jagged line located on a map that has no scale. The boundary cannot be ascertained from the Zoning Map. Toll's surveyor and technical planner could not ascertain the boundary location using the Zoning Map.

The City, by issuing its Administrative Interpretation, obviously concluded that it was not possible to ascertain the R-4/R-1 zoning boundary from the Zoning Map with certainty. RZC 21.04.020.B instructs the City what to do where uncertainty exists as to the location of any boundaries of the zones as shown on the Zoning Map. It requires that the rules set out therein be applied. The rule that applies to the Rosehill Cottages property is RZC 21.04.020.B.7 which states:

> *Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.*

The City opted not to follow its own code governing interpretation of the Zoning Map, but instead relied on an equally unreliable mapping system to conclude that it was no longer

necessary to use the 7 rules of RZC 21.04.020.B to ascertain an uncertain zoning boundary. The City also ignored its own correct interpretation of a zoning boundary of a similarly situated property where it applied RZC 21.04.020.B.7 to locate the R-4/R-1 zoning boundary.

3. **Please state the specific relief requested:**

Overturn the Administrative Interpretation on the basis that the Interpretation is invalid on its face and as applied to the Rosehill Cottages property. Issue a determination that the City must apply the rules of Interpretation set out in RZC 21.04.020.B where there is uncertainty as to a zoning boundary.

In the alternative, if the Hearing Examiner determines the Applicant does not have standing to appeal, stay the Administrative Interpretation to allow the Applicant to file a request for Administrative Interpretation.

4. **Please provide any other information reasonably necessary to make a decision on the appeal:**

The Applicant will file additional legal and factual argument in its legal brief to support the arguments in this appeal statement.

Exhibit 1

Aaron Hollingbery

From: Benjamin Sticka <bsticka@redmond.gov>
Sent: Wednesday, December 13, 2017 2:01 PM
To: Will Greene; Aaron Hollingbery
Subject: Administrative Interpretation
Attachments: 21.04.020B Amending the defination of a Zoning Map Interpretation.pdf

Will/Aaron,

Please find the attached Administrative Interpretation. Please let me know if you have any questions. Thanks,

Ben Sticka
Planner – City of Redmond
(425) 556-2470 – bsticka@redmond.gov

This message has been scanned for malware by Websense. www.websense.com

Exhibit 1

City of Redmond
WASHINGTON

ADMINISTRATIVE INTERPRETATION

Section Reference: Article I, Section 21.04.020B of the Redmond Zoning Code (RZC) – Zoning Map Interpretation

Subject: Amending the definition of a Zoning Map Interpretation

Issue/Question: When considering Redmond Zoning Code 21.04.020B, how should the term "uncertainty" be applied?

RZC 21.04.020B Zoning Map Interpretations states: Where uncertainty exists as to the location of any boundaries of the zones as shown in RZC 21.04.020, Zoning Map, the following rules shall apply:

1. Where boundaries are indicated as following approximately the centerline of the streets, alleys, highways, railroads or watercourses, the actual centerlines shall be considered the boundaries;
2. Where boundaries are indicated as following approximate lot lines and are map scaled at not more than 20 feet from the lines, the actual lot lines shall be considered the boundaries;
3. Where the land is not subdivided or where a zone boundary divides a lot, the boundary shall be determined by map scaling unless the actual dimensions are noted on the map;
4. Where boundaries are indicated as following lines of ordinary high water, government or meander line, the lines shall be considered to be the actual boundaries, and, if they should change, the boundaries shall be considered to move with them;
5. Where a public right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property that merges with;
6. Where an area with one owner is divided into more than one zone, each portion of the property shall have the zone designation indicated, unless subsection B.2 applies;
7. Where a single parcel is split between two zones and a portion of the parcel is zoned R-1 and contains critical areas, the outermost boundary of the critical area buffer shall be considered the boundary between the two zones.

Interpretation: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines. This significantly reduces the likelihood that uncertainty as to the location of zoning boundaries exists. The seven rules (1-7) only apply, if such uncertainty exists. If it does not, then they do not apply.

Reasons: The Zoning Map resides as a layer within the City's geographic information systems database and, as such, is accurate to the parcel layer. Measurements can be easily scaled from this data to determine boundary lines.

Karen Anderson

Karen Anderson, Director
Department of Planning and Community Development

12-13-2017
Date

Exhibit 2

Aaron Hollingbery

From: Karen Anderson <kanderson@redmond.gov>
Sent: Friday, December 15, 2017 7:47 AM
To: Aaron Hollingbery; Benjamin Sticka; Steve Fischer
Cc: Will Greene
Subject: RE: RZC 21.76.100 Review Procedures - Miscellaneous

Aaron,
I think there is some confusion about the issuance of an administrative interpretation that would be subject to appeal. Section 21.76.070 D. 3. of the RZC states that "Any interested person may apply for an interpretation of this code. Applications for administrative interpretation are processed as Type I reviews." In order for there to be an appealable action, the interested party, in this case Toll Brothers, would first have to apply for a specific administrative interpretation. As a Type I permit, it would then be subject to an appeal process should the applicant wish to challenge the interpretation. The City has not yet received such an application, nor has any specific interpretation been made on the property for which Toll Brothers has a pending application, therefore there is no action to appeal.

I hope that this provides clarification. Ben would be happy to assist you in filing an application for an administrative interpretation pursuant to RZC 21.76.070 D. 3.

Best regards,
Karen Anderson

From: Aaron Hollingbery [mailto:ahollingbery@tollbrothers.com]
Sent: Thursday, December 14, 2017 3:47 PM
To: Karen Anderson <kanderson@redmond.gov>; Benjamin Sticka <bsticka@redmond.gov>; Steve Fischer <SFISCHER@REDMOND.GOV>
Cc: Will Greene <wgreene@tollbrothers.com>; Marsha Martin <mmartin@tollbrothers.com>
Subject: RE: RZC 21.76.100 Review Procedures - Miscellaneous

Karen, Ben and Steven,
We are in receipt of an email Ben sent yesterday providing an administrative interpretation regarding RZC 21.04.020B. I am disappointed and surprised that the city issued this interpretation after expressly agreeing to wait until we reconnected this week before moving forward with next steps. As you know, we broached the subject of Toll potentially filing a request for an administrative interpretation but we all agreed to evaluate the options before moving forward.

Now that the city has issued an interpretation, we will be filing an appeal. RZC 21.76.060I.2.c provides for a 14 day appeal period from the date the interpretation was issued. Can you please confirm that the appeal therefore must be filed on or before December 27?
Thank you,
Aaron

Aaron Hollingbery
Vice President for Land Entitlement
Seattle Division

Toll Brothers
9720 NE 120th Place, #100 | Kirkland, WA 98034
o 425.825.5310
ahollingbery@tollbrothers.com | www.tollbrothers.com

Exhibit 2

From: Aaron Hollingbery
Sent: Friday, December 08, 2017 3:31 PM
To: Benjamin Sticka <bsticka@redmond.gov>
Cc: Will Greene <wgreene@tollbrothers.com>
Subject: RE: RZC 21.76.100 Review Procedures - Miscellaneous

Ben,
Thank you for the follow-up. We will review and, pursuant to our discussion earlier today, plan to connect with the city to discuss the options for the path forward next week. Until that time, it is our understanding that the city will be waiting to issue anything in this regard.

Thank you and have a good weekend.
Aaron

Aaron Hollingbery
Vice President for Land Entitlement
Seattle Division

Toll Brothers
9720 NE 120th Place, #100 | Kirkland, WA 98034
o 425.825.5310
ahollingbery@tollbrothers.com | www.tollbrothers.com

From: Benjamin Sticka [mailto:bsticka@redmond.gov]
Sent: Friday, December 08, 2017 1:20 PM
To: Aaron Hollingbery <ahollingbery@tollbrothers.com>; Will Greene <wgreene@tollbrothers.com>
Subject: RZC 21.76.100 Review Procedures - Miscellaneous

Aaron/Will,

Exhibit 2

I wanted to get back to you regarding possible "next steps" and what the Code states. Redmond Zoning Code 21.76.100 Miscellaneous (D)(8) states the following: *Request for Interpretation. Any interested person may apply for a an Interpretation of this Code where the Code, or its application to specific circumstances, is ambiguous, i.e., where the Code is susceptible to two or more reasonable Interpretations. Applications for administrative interpretation are processed as Type I reviews shall be subject to the criteria outlined in RZC 21.76.050.D.*

There is no fee associated with this request. The request would be need to be formally requested in writing with any relevant exhibits and material. The Administrative Interpretation would follow the flow chart for Type I process in Figure 21.76.050A. Please let me know if you have any additional questions? Thank you.

Ben Sticka
Planner – City of Redmond
(425) 556-2470 – bsticka@redmond.gov

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