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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

NO. HEA-2018-02
ROSE HILL COTTAGES
CITY’S POST-HEARING BRIEF

I. INTRODUCTION

In this appeal, Toll WA LP challenges the City’s determination that a zoning boundary on Toll’s property is not “uncertain,” and that interpretive rules for uncertain boundaries—particularly an interpretive rule that would allow Toll to shift the zoning boundary and increase allowed unit-density on its property—do not apply.

Toll argues that the zoning boundary is ambiguous because the City’s GIS layer depicting the zoning boundary, while precise in itself, is based on inaccurately digitized paper maps. The testimony at hearing, however, shows that the City’s “official” zoning map—adopted by reference by the City Council and codified in the City Code—was generated from the City’s GIS data. The GIS data is therefore a perfect representation of the official City zoning boundaries, and any inaccuracies in the initial process of creating the GIS layer were effectively ratified by City Council. The City therefore urges the Hearing Examiner to affirm the interpretation of the City’s

1 Director of Planning and Community Development (“Director”) that the zoning boundary is
2 certain, and that the interpretive rules for uncertain boundaries do not apply to the Toll property.
3

4 II. STATEMENT OF FACTS

5 Toll has proposed a 28-unit subdivision, known as Rose Hill Cottages, for a parcel of land
6 in the City’s Willows/Rose Hill neighborhood (“the Rose Hill parcel”). The Rose Hill parcel is
7 currently owned by the Wilmoor Development Corporation, which received a site plan entitlement
8 for a similar (but not identical) residential development in 2015.

9 The Rose Hill parcel is bisected by a zoning boundary between the City’s R-4 zone to the
10 west and R-1 zone to the east. There are also critical areas (a wetland, stream, and steep slopes)
11 on the R-1 zone of the parcel. The R-1/R-4 zoning boundary lies roughly half way between the
12 easternmost and westernmost boundaries of the parcel, but, because of the parcel’s panhandle
13 shape, the bulk of the parcel’s area lies on the R-1 portion of the parcel. Under the Redmond
14 Zoning Code (“RZC”), the maximum density in the R-1 zone is one dwelling unit per gross acre.
15 RZC 21.08.030.B. The maximum density for the R-4 zone is 4 dwelling units per gross acre. RZC
16 21.08.060.B.

17 The crux of the parties’ disagreement lies in the precise location of the zoning boundary
18 (or, more specifically, whether the boundary can be located with precision). Under the RZC,
19 certain interpretive rules apply to “uncertain” zoning boundaries on the City zoning map. RZC
20 21.04.020.B. Under these rules, where an uncertain boundary splits a parcel between the R-4 and
21 R-1 zone, the zoning boundary shifts to be contiguous with the property’s critical areas buffers.
22 RZC 21.04.020.B.7. Applying this rule to the Rose Hill parcel would shift a significant portion of
23 land from the R-1 to R-4 zone, enabling more units to be built in the Rose Hill subdivision.

24 The City, however, maintains a “layer” of zoning boundary information in its GIS system
25 that can accurately locate a zoning boundary within hundredths of a foot. The zoning boundary
26

1 layer in the City’s GIS system was originally created by digitizing the paper maps designating
2 zoning boundaries that had been formally adopted by ordinance or resolution.

3 In 2011, the City completed a major overhaul of its Zoning Code, replacing Chapter 20 of
4 the Redmond Municipal Code (known as the “Redmond Community Development Guide”) with
5 a separate Zoning Code. *See Redmond, Wa., Ordinance 2584 (2011)*. The new Zoning Code was
6 to be hosted online, and the City Council adopted the new code by reference to a URL link to the
7 new Code’s website.

8 One of the provisions of Redmond’s online Zoning Code states that official zoning
9 boundaries are established “as shown and depicted on the Zoning Map(s) of the City, which shall
10 be maintained as such . . . by Redmond Development Services.” RZC 21.04.020.A. Underneath
11 this provision, the code provides links to two maps—one labeled “Map 4.1: City of Redmond
12 Zoning Map (34” x 44”)” and the other “Zoning Map Book (8.5” x 11”).” These maps are PDF
13 files hosted online, and they each depict zoning within the City of Redmond. Toll appears to agree
14 that these PDF maps are the City’s officially sanctioned zoning maps.¹

15 Melissa Brady, the City’s GIS database supervisor, testified that these PDF maps were
16 generated from the City’s GIS zoning boundary layer. The PDFs are therefore a perfect
17 representation of the City’s GIS zoning layer (and vice versa). City staff in the planning
18 department consider the GIS data the “official” zoning map and have used GIS data as the City’s
19 “zoning map” since 2011.

20 Using the City’s GIS data, the user can precisely locate zoning boundaries, either with the
21 City’s online “property viewer,” *see* City of Redmond, REDMOND’S PROPERTY VIEWER,
22 <http://gis.redmond.gov/pv/> (last visited February 23, 2018).² The online property viewer includes

23 ¹ Toll evidently submitted a public records request to the City seeking a copy of the official zoning map and received
24 a PDF document very similar to the maps referenced in RZC 21.04.020.A, but with a slightly different revision date.
25 They submitted this document as Exhibit A-1 and referred to it as the “official zoning map.” There do not appear to
26 be any substantial or relevant differences between the three documents.

² The City encourages the Hearing Examiner to visit the property viewer site and explore the GIS tools available on
the site.

1 built-in measuring and coordinate tools that allow the user to determine the location of a zoning
2 boundary within a few feet. The user can also download the GIS zoning boundary layer and upload
3 it to the user's own GIS platform. If the user uploads the GIS layer to a more sophisticated GIS
4 platform that supports "snapping"—*i.e.*, automatically relocating a cursor clicked near a zoning
5 boundary directly to the zoning boundary—the user can determine the location of the boundary
6 within hundredths of a foot. The City uses such software, known the "ArcGIS" system, in its
7 planning work. The City also provides a free download of ArcGIS software on its website.

8 Both the City's PDF maps and the GIS zoning layer contain disclaimers. The disclaimer
9 on the City's PDF states, "This map is a general representation. The City of Redmond does not
10 warrant precise boundaries. Maps may not fully reflect the most recent policy updates. Please
11 consult with Planning and Community Development for zoning verification or specific zoning
12 questions." The Redmond property viewer also contains a disclaimer that reads:

13 Information shown on the Property Viewer is derived from public records that are
14 constantly undergoing change and do not replace a site survey. Data and records are not
15 warranted for content or accuracy. The City does not guarantee the positional or thematic
16 accuracy of the GIS data. The GIS data or cartographic digital files are not a legal
17 representation of any of the features that it depicts, and disclaims [sic] 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.

18 At hearing, the City's Planning Director and Planning Manager both testified that
19 disclaimers of this kind are common on city zoning maps, and they are meant to protect the City
20 from lawsuits by citizens who use the map for private property matters. The disclaimers do not
21 mean the maps are inaccurate; they simply mean that a user cannot make a claim against the City
22 based on his or her reliance on the map.

23 Toll raised the issue of its supposedly uncertain zoning boundary in late November 2017.
24 Toll representatives met with City planners on December 8 and advised the City that Toll was
25 contemplating applying for an administrative interpretation regarding the uncertain boundary and
26 R-1/R-4 interpretive rule in RZC 21.04.020.B.7. Before Toll could apply, then-Director Karen

1 Anderson³ issued general guidance that “[t]he Zoning Map resides as a layer within the City’s
2 geographic information systems” and that this “significantly reduces the likelihood that uncertainty
3 as to the location of zoning boundaries exists.”

4 After this decision, Toll informed Ms. Anderson that it would be appealing the
5 administrative interpretation. Ms. Anderson contested the appealability of the decision, arguing
6 that this administrative interpretation was not binding or site-specific, and therefore not appealable.
7 Toll nevertheless proceeded with its appeal. On January 26, 2018, Toll requested a site-specific
8 administrative interpretation from the Planning Department. The Planning Department did not
9 have time to prepare one before the hearing on the first appeal on February 27. The parties held a
10 half-day hearing on February 27, which the Hearing Examiner continued to March 13. On March
11 9, the City issued a second administrative interpretation in response to Toll’s January 26 request.
12 This interpretation was substantially similar to the first, except that it calculated the area in each
13 zoning designation on the Rose Hill parcel based on the GIS data (as prescribed by the reasoning
14 of the first interpretation). Toll appealed the second interpretation, then moved to consolidate the
15 appeals on the day of the hearing. The City agreed, and both appeals are now before the Hearing
16 Examiner.

17 III. STATEMENT OF ISSUES

18 The Hearing Examiner asked the parties in their post-hearing briefing to identify the
19 specific issues he is being asked to decide.

20 The decisions on appeal before the Hearing Examiner are the City’s December 2017 and
21 March 2018 administrative interpretations. The first administrative interpretation concluded that
22 the City’s GIS zoning boundary layer accurately represents the official City zoning boundaries,
23 and that use of GIS significantly reduces the likelihood that a zoning boundary would be
24 “uncertain” and trigger the interpretive rules in RZC 21.04.020.B. The second administrative

25 _____
26 ³ Ms. Anderson has since left her position as Director of Planning and Community Development. The Deputy City
administrator, Erika Vandenbrande, has stepped in as Acting Director.

1 interpretation applies these principles to the Toll property. Using the zoning boundary GIS layer
2 and the GIS system's area calculation tool, the City concluded that the R-4-zoned portion of the
3 Toll property contains 2.46 acres and the R-1-zoned portion contains 8.4 acres.

4 Toll is asking the Hearing Examiner to reverse both decisions. The City is asking the
5 Hearing Examiner to uphold them. There are therefore three issues before the Hearing Examiner:

- 6 1. **Does the zoning boundary layer in the City's GIS system accurately**
7 **represent the zoning boundaries officially adopted by the City Council,**
8 **given that the map formally adopted by the City Council was generated**
9 **from the GIS layer?**
- 10 2. **Is the zoning boundary that bisects Toll's Rose Hill parcel "uncertain,"**
11 **given that the City's GIS zoning boundary layer allows the user to**
12 **locate the zoning boundary within hundredths of a foot?**
- 13 3. **Are the acreage calculations in the City's second administrative**
14 **interpretation correct, given that they were calculated using the GIS**
15 **system's area calculation tool?**

16 IV. ARGUMENT

- 17 1. **The Hearing Examiner should afford "substantial weight" to the**
18 **City's decision in this appeal.**

19 Under the Zoning Code, the Hearing Examiner must give "substantial weight" to the
20 decision of the Director in a Type I appeal. RZC 21.76.060.I.4. This is in accord with judicial
21 principles giving the same deference to municipal interpretations of their own ordinances in LUPA
22 appeals. *See, e.g., Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wn. App. 436, 440, 836
23 P.2d 235 (1992). This is particularly the case where, as discussed below, the City introduces
24 evidence that the municipal decisions or practices in the case are of long standing, rather than a
25 by-product of litigation. *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737, ¶ 35,
26 317 P.3d 1037 (2014). In his review, the Hearing Examiner should bear this standard in mind,
and, where two reasonable interpretations of an ambiguous code provision exist, should favor the
City's. *See Citizens for a Safe Neighborhood*, 67 Wn. App. at 440.

1 **2. The GIS zoning boundary layer perfectly represents the PDF maps**
2 **formally adopted as the “official zoning maps” of the City because the**
3 **PDF maps were digitally generated using the GIS layer.**

4 The crux of Toll’s arguments in this case is that the zoning boundary layer in the City’s
5 GIS system does not accurately represent the “official” (*i.e.*, Council-adopted) zoning boundaries.
6 The alleged basis for this inaccuracy is that the GIS layer was created by “digitizing” officially
7 adopted paper maps, and digitizing is a necessarily unreliable process.

8 However, testimony at hearing showed that the opposite is true: the zoning boundary layer
9 is not a “digitized” version of a paper map, the City’s official paper maps are “paperized” versions
10 of the digital map. Though the City first created its zoning boundary layer by digitizing the paper
11 zoning maps adopted by the City council, the City has since adopted consolidated zoning maps,
12 now hosted as PDFs on the City’s online Zoning Code, which designate the official City zoning
13 boundaries. *See* RZC 21.04.020.A. These PDFs were digitally generated from the City’s zoning
14 boundary layer in the GIS database as it existed when the maps were created. In other words, the
15 PDF maps formally adopted in the City Code are perfect representations of the GIS zoning
16 boundary layer (and vice versa). Because the City Council adopted these representations, it
17 effectively ratified any inconsistencies or inaccuracies in the pre-2011 digitizing process. Add to
18 this the City’s testimony from Steven Fischer regarding the City’s longstanding interpretation of
19 the GIS maps as the “official” zoning maps, and the Hearing Examiner should conclude that the
20 GIS zoning boundary layer *is* an official zoning map for all intents and purposes.

21 Toll offers only one other substantial challenge to the accuracy of the GIS system: that a
22 disclaimer on the City’s online property viewer renders the GIS data unreliable. The primary
23 import of this legal disclaimer is to disclaim the City’s liability to property owners in private
24 boundary disputes for the City’s representations of parcel boundary lines or other physical features.
25 Applying the disclaimer to the GIS boundary layer is nonsensical—there is nothing for the zoning
26 boundary layer to be inaccurate about, since the City Council effectively adopted that layer as the
27 official zoning map when it adopted the PDF maps generated from the data. Furthermore, the PDF

1 map that Toll concedes is the “official” maps contains a similar legal disclaimer. If a legal
2 disclaimer makes a zoning map unauthoritative or unreliable, then the City is without any binding
3 zoning map at all.

4 **3. Given the accuracy of the zoning boundary layer and the technical**
5 **capabilities of GIS mapping, there is no basis for claiming that the**
6 **Toll zoning boundary is “uncertain.”**

7 Once one accepts the accuracy of the zoning boundary layer as a representation of the
8 “official” zoning boundaries, there is no real basis for alleging that the zoning boundary on the
9 Toll property is “uncertain.” Using the measuring and/or coordinate tools available in GIS
10 property viewer, the user can identify the location of the zoning boundary on the Toll property
11 within a few feet. If the user downloads the layer and uploads it into a more sophisticated GIS
12 platform that supports “snapping,” the user can locate a feature within hundredths of a foot.

13 Toll only offered two rebuttals to this inevitable conclusion. First, Toll’s surveying expert
14 testified that he would not use GIS in surveying. But surveying is an entirely different endeavor
15 than locating a zoning boundary for planning purposes; a survey comes with a legal guarantee by
16 the surveyor—a zoning boundary explicitly does not (as explained in the disclaimer). Even if a
17 zoning boundary is not “surveyable,” it can still be located with precision. A margin of error of a
18 few hundredths of a foot is, in the judgment of the Director, sufficiently “certain” for purposes of
19 RZC 21.04.020. To the extent there is any ambiguity in the appropriate threshold for “uncertainty”
20 in this context, this is the kind of interpretive judgment which the Hearing Examiner should afford
21 deference to under the Code.

22 Moreover, Toll did not offer any evidence seriously rebutting the acreage calculations in
23 the City’s second administrative interpretation. If the Hearing Examiner accepts the zoning
24 boundary layer as an accurate representation of the City’s official zoning boundaries, he must also
25 accept the validity of the City’s as-applied determinations.
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V. CONCLUSION

The Hearing Examiner must uphold the administrative interpretations as sound interpretations of the Code in light of technological advances in mapping technology. The GIS layer in the City’s mapping system is a perfect representation of the “official” zoning map under the City code, because the official maps were generated from the GIS data itself. The GIS layer allows the user to locate the Toll zoning boundary within hundredths of a foot. This margin of error is not sufficiently “uncertain” under RZC 21.04.020 to trigger an interpretive rule that would allow Toll to substantially shift the zoning boundary. The Hearing Examiner should therefore refuse to apply the R-1/R-4 interpretive rule to the Toll property and should uphold the rationale and ultimate area calculations in the City’s administrative interpretations.

DATED this 2nd day of April, 2018.

OGDEN MURPHY WALLACE, PLLC

By



James E. Haney, WSBA #11058
Kate D. Hambley, WSBA #51812
Attorneys for City of Redmond

1 **DECLARATION OF SERVICE**

2 I, Charolette Mace, an employee of Ogden Murphy Wallace, PLLC, certify that on the date
3 below, I emailed this document, and mailed the original and one copy to:

4 Cheryl D. Xanthos
5 Clerk to the Hearing Examiner
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7 15670 NE 85th Street
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10 and emailed this document only to:

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16 *Attorney for Appellants*

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

19 Executed at Seattle, Washington, this 2nd day of April, 2018.

20 

21 _____
22 Charolette Mace
23 *Legal Assistant*