



APPEAL APPLICATION FORM

To file an appeal of a Type I or II decision or a SEPA determination, please complete the attached form and pay the applicable 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 a SEPA determination** - Any interested person may appeal a threshold determination, adequacy of a final EIS, and the conditions or denials of a requested action made by a nonelected City official based on SEPA. No other SEPA appeals shall be allowed.
- **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.

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 The application fee will not be refunded for appeals that are withdrawn or dismissed.

Hearing Examiner or City Council decision 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.

(Staff Use Only)	RECEIVED CITY OF REDMOND APR 03 2018 OFFICE OF THE HEARING EXAMINER
File No: _____	
Date Received: _____	
Receipt No. _____	

Please check the applicable appeal:

- Appeal to the Hearing Examiner of a SEPA determination *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)*

Section A. General Information

Name of Appellant: Barry Schnell

Address: 13319 NE 112th Place

City: Redmond State: WA Zip: 98052

Email: barry_schnell@msn.com

Phone: (home) 425.891.5463 (work) _____ (cell) _____

Name of project that is being appealed: Rose Hill Cottages, Site Plan Extension

File number of project that is being appealed: LAND-2013-01720

Date of decision on project that is being appealed: September 20 or 21, ~~2018~~ 2017 BPS

Expiration date of appeal period: See Attachment

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

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

- 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

3. Please state the specific relief requested:

See Attachment

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

See Attachment

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)*)
- Hearing Examiner decision on an application (must be appealed to Superior Court)
- City Council approval or denial (must be appealed to Superior Court *RZC 21.76.060(Q)*)



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of Appeal of
Barry Schnell,
Of an Administrative Decision

NO. LAND-2013-01720
APPEAL OF DRAFT SITE PLAN
EXTENSION DATED SEPTEMBER
21, 2017

I. INTRODUCTION

Appellant Barry Schnell appeals a decision by the Technical Committee granting an extension of site plan entitlement to Mr. Greg Wilson of Wilmoor Development Corporation concerning the proposed Rose Hill Cottages development on King County Tax Parcel No. 3426059071. The Technical Committee voted to approve the extension on September 20, 2017, with no prior notice of Mr. Wilson’s application for a site plan extension. But that decision was never finalized in writing as required by the Redmond Zoning Code, nor was public notice provided as required for a valid Type II decision.

On September 22, 2017, Appellant and others were affirmatively told by the Department of Planning and Community Development that the decision was not final for purposes of appeal to the Hearing Examiner. They expressed an intent to appeal, but were told they would have to wait until the decision was reduced to writing before the appeal period would begin.

The Technical Committee later issued a new, Type II decision denying the extension request, in large part based on comments submitted by Appellant. But several months later, on March 20, 2018, the Redmond Hearing Examiner Pro Tem held that a draft letter from the city to Mr. Wilson, dated September 21, 2018, constituted the city’s final extension decision. *See In the Matter of Appeal of Greg Wilson, on behalf of Wilmoor Development Corp.*, No. HEA-2018-01, Findings, Conclusions, and Decision (March 20, 2018). That draft letter was never shared with the public, as a final decision would have been under the Redmond Zoning Code. No member of the public (including Mr. Wilson) or the Department of Planning and Community Development believed at the time that the first, draft

1 decision from September was final. Over protest by the city, and after Appellant was denied
2 intervention in that proceeding, the Hearing Examiner Pro Tem held otherwise.

3 This appeal is being filed within 14 days after the Hearing Examiner made that decision, and
4 first announced that the “final” decision was made months before the city represented or any member
5 of the public was informed—when Appellants and others were materially misled and dissuaded from
6 filing an appeal of that decision by the Department of Planning and Community Development.

7 II. GENERAL INFORMATION

8 Name of Appellant: Barry Schnell

9 Address: 13319 NE 112th Place
10 Redmond, WA 98052

11 Email: barry_schnell@msn.com

12 Phone: 425.891.5463

13 Name of Project: Rose Hill Cottages, Site Plan Extension

14 File Number: LAND-2013-01720

15 Date of Decision: September 20 or 21, 2017

16 Expiration Date
17 of Appeal Period: April 3, 2018 — fourteen days after the hearing examiner decided that
18 the challenged decision was final, after Appellant and the public were
19 materially misled by the city that it was not.

20 III. STATEMENT OF STANDING

21 Appellant is a party of record on this project within the meaning of RZC 21.76.060.I.2.a and
22 attended the Neighborhood Meeting held on May 28, 2014. Appellant is a resident of NE 112th Place,
23 which is the road that the proposed development is to be built on, and will experience increased traffic,
24 noise, and other land use impacts as a result of the development. Appellant also submitted comments
25 on the proposed extension request on December 4, 2017, after the city finally complied with the notice
26 and comment requirements for Type II decisions, but after the allegedly final decision was made in
this case.

IV. FACTS DEMONSTRATING THAT APPELLANT WILL BE ADVERSELY AFFECTED

The Rose Hill Cottages development at issue in this appeal is a 24-home development on
roughly three buildable acres in the Willows/Rose Hill neighborhood of Redmond. The project would

1 be constructed very near to Appellant's house, and would result in substantial traffic, noise, and other
2 land use impacts including loss of open space and a dramatic change in neighborhood character. The
3 site plan was also originally approved, prior to the decisions at issue in this case, with an exception to
4 city sewer requirements, relieving the project from needing to extend public sewer along NE 112th
Place. Thus, the extension adversely affects Appellant by approving a project that will essentially
preclude public sewer in this area for the foreseeable future.

5 V. CONCISE STATEMENT IDENTIFYING EACH ALLEGED ERROR OF FACT, LAW,
6 OR PROCEDURE, AND HOW THE DECISION HAS FAILED TO MEET
7 THE APPLICABLE DECISION CRITERIA

8 RZC 21.76.090.C.2 provides that a Type I, II, or III land use decision may be extended on a
9 yearly basis upon a showing of "proper justification." In turn, proper justification consists of one or
10 more of the following: (a) economic hardship, (b) change of ownership, (c) unanticipated construction
and/or site design problems, or (d) other circumstances beyond the control of the applicant determined
unacceptable by the Technical Committee.

11 On September 18, 2017, Mr. Wilson submitted an application to extend the Rose Hill Cottages
12 site plan. On September 20, 2017, the Technical Committee voted to conditionally approve the
13 extension on the sole basis of an alleged change of ownership, but would need more information to
14 finalize that conditional decision. But the property had not changed ownership. Mr. Wilson had signed
a purchase and sale agreement with Toll Brothers LP, but that was prospective — ownership had not
yet changed. To this day, ownership remains the same.

15 The Technical Committee's September 20 decision was clearly erroneous and otherwise not
16 in accordance with the law. RZC 21.76.090.C.2 requires a change of ownership, not a prospective
17 change of ownership that has not, and may never, occur. As the Department of Planning and
18 Community Development would later state in its staff report supporting the city's final decision
19 disapproving the extension: "a change of ownership has not occurred, as the applicant is only in
discussions with Toll WA LP to sell their property. . . . Staff has not yet seen a fully executed
purchase agreement." For this reason, the September 20 decision of the Technical Committee
should be reversed.

20 In addition to the above, Mr. Wilson's application did not satisfy any of the other criteria
21 for a site plan extension listed at RZC 21.76.090.C.2, including economic hardship, unanticipated
22 construction or site design problems, or other uncontrollable circumstances deemed sufficient by the
23 Technical Committee. Mr. Wilson's failure to justify an extension based on these criteria is
documented in the Department of Planning and Community Development's staff report for the hearing
examiner's decision referenced in Section I, above. As the staff report concludes:

24 First, economic hardship has not been demonstrated by the applicant.
25 The applicant has made no attempt to define an economic hardship.
26 Therefore, there is no argument with regard to "economic hardship"
as a criteri[on] for granting of an extension. Second, a change of
ownership has not occurred, as the applicant is only in discussions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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.

* * *

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 [*sic*] 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.

* * *

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

1 to support these claims including emails, letters or any other
2 correspondence with City employees that speaks to the alleged
3 delays. Furthermore, no delays from the City regarding Site Plan
4 Entitlement (LAND-2013-01720) have taken place, as little
5 communication has taken place. The applicant's justifications are
6 based on those criteria being met through another permit entirely, but
7 those alleged delays are not relevant to this appeal. Therefore, there
8 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.

9 Staff Report at 7–9. For purposes of this appeal, we fully incorporate the analysis contained in the
10 staff report dated February 20, 2018 for the Examiner Pro Tem's decision in the HEA-2018-01 matter,
as it applies to the decision criteria at RZC 21.76.090.C.2.

11 For these reasons, too, the Technical Committee's decision approving the extension was
12 clearly erroneous and otherwise not in accordance with the law.

13 VI. RELIEF REQUESTED

14 Appellant requests that the appeal be granted in full, that the Technical Committee's approval
15 of the site plan extension be reversed, and that the extension be denied.

16 VII. OTHER INFORMATION REASONABLY NECESSARY TO MAKE 17 A DECISION ON THE APPEAL

18 The site plan extension in this case is properly classified as a Type II decision under the
19 Redmond Zoning Code, which requires prior public notice before the city issues a decision. *See*
20 RZC 21.76.080.B; RZC 21.76.050.G (Figure 21.76.050B; discussing process for Type II decisions,
21 including notice). Because no notice was provided prior to the allegedly "final" decision being
made on September 20 or 21, 2017, because no member of the public was informed that the city's
draft approval letter was in fact "final," and because Appellants and others were told that they could
not file an appeal until a final decision was issued, this appeal is timely.

22 VIII. CONCLUSION

23 For the reasons above, the site plan extension approved on September 20 or 21, 2017 should
24 be reversed, and the extension denied.

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated this 3rd day of April, 2018.

Respectfully Submitted,

BRICKLIN & NEWMAN, LLP

By: 
Bryan Telegin, WSBA No. 46686
1424 Fourth Avenue, Suite 500
Seattle, WA 98101
Tel: (206) 264-8600
Fax: (206) 264-9300
Email: telegin@bnd-law.com

Attorneys for Appellant Barry Schnell

APPELLANT SIGNATURE


Barry Schnell