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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

IN THE MATTER OF THE APPEAL
OF GREG WILSON, ON BEHALF OF
WILMOOR DEVELOPMENT CORPORATION,
OF AN ADMINISTRATIVE DECISION.

NO. HEA-2018-01

NO. LAND-2013-01720

OPEN RECORD APPEAL HEARING

HELD ON
TUESDAY, FEBRUARY 27, 2018
10:00 A.M.

BEFORE ANDREW REEVES
HEARING EXAMINER PRO TEMPORE

OFFICE OF THE HEARING EXAMINER
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6 HEARING EXAMINER PRO TEMPORE

7

8 THE HEARING EXAMINER: Testing. Thank

9 you.

10 Okay. Well, good morning. I'm going to

11 go ahead and call this session of the City of

12 Redmond Hearing Examiner to order. For the record,

13 today is February 27th, 2018, at 10:00 a.m. This is

14 -- we have one item on the agenda this morning, an

15 appeal of a decision from the City's Technical

16 Committee to deny a one-year extension of the

17 Rosehill Cottages site plan entitlement. My office

18 has labeled this as number HEA-2018-01. Previously,

19 this was also LAND-2013-01720.

20 My name is Andrew Reeves. I'm a hearing

21 examiner from Sound Law Center. And today I'll be

22 serving in the capacity as the pro tem hearing

23 examiner here in the City of Redmond. To that end,

24 my role will be to collect evidence in the form of

25 exhibits and testimony to determine whether the City

6	<p>1 erred in denying the extension request at issue in 2 today's hearing. 3 Prior to today's hearing, my office received several exhibits after we issued 4 prehearing orders establishing when witness and 5 document lists, briefs, motions, and exhibits would 6 be due. I note that the parties were great in 7 complying with those prehearing orders. And all 8 exhibits that were submitted to my office will 9 deemed admitted, absent any objections. Those 10 objections can be raised by other party in the 11 course of the hearing. 12 (Whereupon, Appellant's Exhibit A1, 13 Exhibit A2, Exhibit A3, Exhibit A4, Exhibit A5, 14 Exhibit A6, Exhibit A6, Exhibit A7, Exhibit A8, 15 Exhibit A9, Exhibit A10, Exhibit A11, Exhibit A12, 16 Exhibit A13, Exhibit A14, Exhibit A15, Exhibit A16, 17 Exhibit A17, Exhibit A18, Exhibit A19 and Exhibit 18 A20 and City's Exhibit C1, Exhibit C2, Exhibit C3, 19 Exhibit C4, Exhibit C5, Exhibit C6, Exhibit C7, 20 Exhibit C8, Exhibit C9, Exhibit C10, Exhibit C11, 21 Exhibit C12, Exhibit C13 and Exhibit C14 were 22 admitted.) 23 THE HEARING EXAMINER: We also established 24 the order of proceedings. These are also laid out 25</p>	8
7	<p>1 in the Hearing Examiner Rules of Procedure. The 2 prehearing order -- we figured that the appellant 3 would go first and present their evidence and 4 witnesses, followed by the City presenting their 5 evidence and witness and potentially closing 6 arguments. I do note that the Hearing Examiner 7 Rules of Procedure allows for City staff to present 8 a brief presentation on the history of the proposal. 9 I don't know who's representing City staff, but I 10 was curious if that is something they wanted to do 11 here today. 12 MR. HANEY: Good morning, Mr. Examiner. 13 My name is James Haney, and I am representing the 14 City of Redmond in these proceedings. I am the City 15 attorney. With me today is Kate Hambley from my 16 office; also, Karen Anderson, the planning director; 17 Benjamin Sticka, the project planner; and Steven 18 Fischer, the development review manager. We also 19 have a number of other City staff here in -- in the 20 event that we need them to testify. 21 With respect to a presentation, Mr. Sticka 22 has prepared a very brief PowerPoint presentation, I 23 believe, to acquaint the Examiner with the history 24 of the project. If you desire that, we're certainly 25 willing to provide it. And if you'd rather dispense</p>	9

1 with it, we can do that as well.
 2 THE HEARING EXAMINER: As long as it's
 3 brief, I think it's helpful, especially if there are
 4 members of the public that may be in attendance
 5 interested in the proposal. So --
 6 MR. HANEY: Okay.
 7 THE HEARING EXAMINER: -- great. We'll
 8 plan on proceeding in -- in -- in that respect. So
 9 we will have a brief opening PowerPoint from City
 10 staff, and then we'll move to the -- the sort of
 11 guts of the legal arguments that will be presented
 12 today.
 13 I note there are several attorneys
 14 involved today. We are not bound by the court's
 15 rules of procedure when we're in the hearing
 16 examiner proceedings. And the goal is to proceed in
 17 a manner that's both efficient and fair, which is
 18 not to say that I will not entertain objections.
 19 But whenever possible, if we can proceed in a sort
 20 of orderly and civil manner, I think that is the --
 21 the best way forward.
 22 Finally, all testimony from witnesses will
 23 be taken under oath or affirmation. That's because,
 24 were my decision to be appealed, the exhibits that
 25 were admitted into the record and the audio

1 recording of today's hearing would serve as the
 2 foundation for that appeal under the Land Use
 3 Petition Act.
 4 So I think with those opening remarks, we
 5 can go get -- go ahead and get started. And I will
 6 get City staff sworn in for their presentation.
 7 And I'm not -- this is weird. I'm not
 8 used to having people's backs to me, but it's okay.
 9 It's -- wherever works for you.
 10 It's Mr. Sticka that is presenting?
 11 (WHEREUPON, Benjamin Sticka was duly
 12 sworn.)
 13 THE HEARING EXAMINER: Thank you. And you
 14 don't have to face me while you do it. I'm just
 15 saying this is a setup that I'm not accustomed to.
 16 So --
 17 MR. HANEY: Mr. --
 18 THE HEARING EXAMINER: -- please proceed.
 19 MR. HANEY: Mr. Examiner, as a preliminary
 20 matter --
 21 THE HEARING EXAMINER: Sure.
 22 MR. HANEY: -- I just wanted to note two
 23 things. First, Ms. Orrico and I discussed this
 24 before, and I don't believe there will be any
 25 objection to any of the exhibits.

10	<p>1 THE HEARING EXAMINER: Okay.</p> <p>2 MR. HANEY: I think we've all agreed that</p> <p>3 the exhibits can come in. And therefore, we won't</p> <p>4 be laying foundation and so forth for the exhibits -</p> <p>5 -</p> <p>6 THE HEARING EXAMINER: Excellent.</p> <p>7 MR. HANEY: -- we move forward.</p> <p>8 The other thing is I -- I wasn't sure.</p> <p>9 The City did submit a staff report. Mr. Sticka had</p> <p>10 prepared that staff report. I don't know that that</p> <p>11 was marked as a City exhibit. That came in after</p> <p>12 the exhibits. I don't know if you wish to make that</p> <p>13 an exhibit. And I presume that there's no objection</p> <p>14 on the part of the -- yeah, the appellant.</p> <p>15 THE HEARING EXAMINER: Sure. Let's see.</p> <p>16 So a couple things. There was reference to Exhibit</p> <p>17 A-20, which would have been a project map, and I</p> <p>18 never received a copy of that. I believe that would</p> <p>19 have been one of the appellant's exhibits while</p> <p>20 we're addressing preliminary matters.</p> <p>21 And as for the staff report, I don't</p> <p>22 believe my office gave it a number either, but let</p> <p>23 me check we're all on the same page.</p> <p>24 MR. HANEY: Okay.</p> <p>25 THE HEARING EXAMINER: Perhaps we did get</p>	12
11	<p>1 it. I was told this was an attachment to the</p> <p>2 witness and document list.</p> <p>3 Oh. I stand corrected. I apologize. We</p> <p>4 did have it. I guess we just didn't realize that it</p> <p>5 was attached. So we have that settled.</p> <p>6 And then as for the City documents, you</p> <p>7 mentioned that a staff report was prepared. So let</p> <p>8 me find that. And this would be the document</p> <p>9 that's, essentially, entitled Memo to Andrew Reeves,</p> <p>10 Hearing Examiner, Pro Tem. It references</p> <p>11 attachments, and it starts with background; is that</p> <p>12 accurate? I believe it's approximately 10 pages,</p> <p>13 Mr. Haney?</p> <p>14 MR. HANEY: Yes, that is correct.</p> <p>15 THE HEARING EXAMINER: Okay. Yeah, so why</p> <p>16 don't we admit that as an exhibit, as you have</p> <p>17 referenced. We would make that Exhibit C-15.</p> <p>18 (Whereupon, City's Exhibit C15 was</p> <p>19 admitted.)</p> <p>20 THE HEARING EXAMINER: And then Mr. Haney,</p> <p>21 I don't recall. Was your brief given an exhibit</p> <p>22 number?</p> <p>23 MR. HANEY: I don't think we -- either --</p> <p>24 either party's briefs were given exhibit numbers.</p> <p>25 THE HEARING EXAMINER: In fact, the</p>	13

14	<p>1 MR. HANEY: -- you know, I want to make 2 sure that what we're doing works for you. And I 3 know you said you didn't care if people's backs were 4 to you, but it is unusual. So if you would rather 5 that we have staff testify from there when they're 6 testifying so that you can look at them, I mean, 7 that -- that would be fine with me as well. 8 THE HEARING EXAMINER: Okay. I would 9 prefer that. It'll feel a little less strange. And 10 then folks that are watching also will be able to 11 see, I think, better, as most of them are over on 12 this side. 13 MR. HANEY: Okay. So when -- when anyone 14 is testifying then, we'll have them testify on this 15 side so -- 16 THE HEARING EXAMINER: That would -- 17 MR. HANEY: -- and you can -- you can -- 18 THE HEARING EXAMINER: Great. 19 MR. HANEY: -- see them. That would be 20 great. 21 THE HEARING EXAMINER: Okay. Anything 22 else? 23 MR. HANEY: No. I think that's all from 24 me. 25 THE HEARING EXAMINER: Okay.</p>	16	
15	<p>1 MR. HANEY: I don't know if Ms. Orrico has 2 anything. 3 THE HEARING EXAMINER: So we'll give Mr. 4 Sticka a second to get set up on the other side. 5 Thank you for that. 6 MS. ORRICO: Mr. Examiner, I would like to 7 take a moment to introduce myself and my -- 8 THE HEARING EXAMINER: Please do. 9 MS. ORRICO: -- clients. My name is Vicki 10 Orrico. I am representing the appellant applicant, 11 Wilmoor Development. My firm is Johns Monroe 12 Mitsunaga and Kolouskova. 13 This is my client, Greg Wilson, who's the 14 president of Wilmoor Development. And I have behind 15 me Kjell Olsson, who is the property owner. 16 THE HEARING EXAMINER: Okay. Thank you 17 for being here. 18 All right. Mr. Sticka, please proceed. 19 MR. STICKA: Good morning, Mr. Hearing 20 Examiner, Pro Tem. Before we get started, I'd like 21 to submit the exhibit of the slideshow that I'm 22 preparing to show you. 23 THE HEARING EXAMINER: Okay. We'll make 24 that Exhibit C-17. 25 MS. ORRICO: Mr. Examiner, we actually</p>	<p>1 haven't seen this exhibit. 2 THE HEARING EXAMINER: Okay. Well, I will 3 provisionally submit it -- admit it. And if you 4 have an objection, we'll address that at the time, 5 okay? 6 MS. ORRICO: Thank you. 7 THE HEARING EXAMINER: You're welcome. 8 (Whereupon, City's Exhibit C17 was offered 9 into evidence.) 10 MR. STICKA: Again, good morning, Mr. 11 Hearing Examiner, Pro Tem. Ben Sticka. I'm here 12 today to discuss LAND-2017-01235, the appeal of the 13 City's denial of the extension of LAND-2013-01720. 14 The subject site is identified by the red 15 boundary. Before you on the location map, the site 16 is located at the northeast corner of 132nd Avenue 17 Northeast and Northeast 112th Place. The site is 18 zoned both R-4, Single-Family Urban Residential, and 19 R-1, Single-Family Constrained Zone, and is located 20 in the Willows / Rosehill neighborhood. 21 The appeal request is that the appellant 22 is appealing the City's denial of the extension of 23 site plan entitlement LAND-2013-01720. The key 24 dates related to the appeal are as follows: October 25 3rd, 2013, an application for a site plan</p>	17

18

1 object at this point and going forward because it
 2 was my understanding Mr. Sticka was going to be --
 3 give a background of the actual application. And
 4 the remainder of these PowerPoint slides seems to be
 5 the City's legal argument, which is not really
 6 appropriate at this point.
 7 THE HEARING EXAMINER: Mr. Haney?
 8 MR. HANEY: Well, I -- I think --
 9 THE HEARING EXAMINER: I tend to agree. I
 10 -- I just -- but I would give you a chance to
 11 respond.
 12 MR. HANEY: I -- frankly, Mr. Examiner, I
 13 -- I think whatever you want to do at this point is
 14 fine. We're prepared to proceed. Mr. Sticka was
 15 going to give his staff report, which is,
 16 essentially, the arguments that are set forth in his
 17 staff report. If you -- we can certainly wait and
 18 do that during our presentation.
 19 THE HEARING EXAMINER: Yeah. Essentially,
 20 this is the staff report, or -- or a sort of recap
 21 of the staff report; is that accurate?
 22 MR. STICKA: That is correct.
 23 THE HEARING EXAMINER: So is the idea that
 24 we're either presenting it now or we're presenting
 25 it later when the City presents its evidence?

19

1 MR. HANEY: Yes.
 2 THE HEARING EXAMINER: Then let's wait
 3 until the City's turn, and we'll let the appellant
 4 go first. Does that work for you?
 5 MS. ORRICO: Thank you, Mr. Examiner.
 6 THE HEARING EXAMINER: You're welcome.
 7 So I'm going to go ahead and wait on
 8 whether to admit it or not. I'm -- I don't actually
 9 see any issue with ultimately admitting it during
 10 the City's presentation of evidence. But for the
 11 moment, we will deem the background section of the -
 12 - today's hearing taken care of and move forward
 13 with the appellant's presentation of evidence.
 14 MS. ORRICO: Thank you, Mr. Examiner.
 15 So I just wanted to clarify. You have
 16 admitted all of Appellant's Exhibit A-1 through
 17 Exhibit A-21 into the record?
 18 THE HEARING EXAMINER: Yes, I have.
 19 MS. ORRICO: Thank you.
 20 So Mr. Examiner, you have our brief, and
 21 we plan to present our substantial legal arguments
 22 in our closing. But just to set the stage, the
 23 applicant submitted a request for an extension of a
 24 site plan entitlement that had been approved, as Mr.
 25 Sticka just noted, in 2015.

20

1 Applicant's extension request was based on
 2 direction it received from City staff. Two days
 3 later, the City's Technical Committee approved the
 4 request for extension, and then some neighbors found
 5 out that the City had granted an extension and
 6 complained. Then some three months later, the City
 7 issued another decision denying the extension they
 8 had already approved.
 9 We believe that the issues here are
 10 primarily legal in nature and rely primarily on the
 11 written record, but some oral testimony, I think,
 12 will be relevant and will help build up the -- your
 13 understanding.
 14 So with that, I would like to call my
 15 first witness, Mr. Greg Wilson.
 16 THE HEARING EXAMINER: Great. And I just
 17 want to clarify for every, too, that I did have the
 18 opportunity to review the file thoroughly before
 19 today's hearing. So although it is, obviously, the
 20 appellant's burden to make their case and -- and the
 21 City's burden to present any evidence they find is
 22 appropriate, I -- I am aware of what's -- what's in
 23 the briefs and the file. So I just wanted to be
 24 clear about that if I hadn't mentioned that in
 25 advance. So --

21

1 MS. ORRICO: Thank you, Mr. Examiner.
 2 THE HEARING EXAMINER: -- with that, we'll
 3 turn it over to your first witness. And again,
 4 we're not strictly bound by the rules of procedure.
 5 So if you'd like to have him testify in a more
 6 narrative fashion, that's fine with me, however
 7 you'd like to proceed.
 8 GREG WILSON, called as a witness on behalf of the
 9 Appellant, having been first duly sworn, was
 10 examined and testified as follows:
 11 THE HEARING EXAMINER: Thank you for being
 12 here.
 13 DIRECT EXAMINATION
 14 BY MS. ORRICO:
 15 Q. So Mr. Wilson, what is Wilmoor
 16 Development's role in the project?
 17 A. I was hired by the property owners to take
 18 the property through the development process and,
 19 ultimately, get approval for site plan entitlement.
 20 Q. So Wilmoor Development does not actually
 21 own the property.
 22 A. No, we do not.
 23 Q. Who does?
 24 A. The property is owned by Mr. Olsson, and
 25 the -- Bernd and Florence Walters (sic), and ME

<p style="text-align: right;">22</p> <p>1 Bergstrom, LLC. 2 Q. And what's your role with Wilmoor 3 Development? 4 A. I'm the president. 5 Q. And how long have you been in the land use 6 development business? 7 A. About 35 years. 8 Q. And when did you begin working on this 9 project? 10 A. Well, the history of this project would go 11 back to 2009 when I was hired by the owners to 12 extend offsite sewers through the Aerojet property 13 to the east to somewhere on the easterly boundary of 14 this property that would provide the possibilities 15 for sewers to be extended for future development. 16 Q. And at some point, did you apply for a 17 site plan entitlement for the property? 18 A. Yes, we did. 19 Q. And did you receive approval of that? 20 A. We did. We received approval in December 21 of 2015. 22 Q. And when did Toll Brothers come into the 23 picture with regard to the property? 24 A. My first communication with Toll would 25 probably have been in mid-December of 2016. They</p>	<p style="text-align: right;">24</p> <p>1 contract based on that? 2 A. We did not agree at that time to extend 3 the contract. I had a couple of issues because we 4 had our SPE approval in place. And so prior to 5 giving Toll that green light -- and they had 6 extension of their feasibility -- there were a 7 couple of questions that I felt needed to be 8 answered at the City staff level before we were 9 comfortable allowing Toll to move forward and 10 investigate that possibility of their SPE. 11 Q. So when you say "SPE," you mean site plan 12 entitlement. 13 A. Correct. 14 Q. Thank you. So what were the questions you 15 had, and how did you get those questions answered? 16 A. We had a meeting with Planner Sarah Pyle 17 in early February, and that meeting included Aaron 18 Hollingbery and Will Greene from Toll Brothers and 19 myself and Sarah. And I was -- Toll was there to, 20 obviously, ask questions regarding their proposed 21 application. 22 I had two questions. And those were: 23 What would happen to our approval if we allow Toll 24 to go forward with theirs? And then what would 25 happen if I got to that point in my -- our -- our</p>
<p style="text-align: right;">23</p> <p>1 then took the property under contract in early 2 December of 2016. 3 Q. And is that property still under contract? 4 A. Yes, it is. 5 Q. And at some point, did they ask you to 6 extend the contract? 7 A. The original purchase and sale agreement 8 included a -- which would be pretty standard, a 9 feasibility period. And I don't remember exactly 10 how long that period was. Typical would be 60 to 90 11 days. 12 Q. And so did you agree to extend the 13 contract off the -- right off the bat? 14 A. No, no. That was -- so they had an 15 initial feasibility period. During that 16 feasibility, they, you know, did their due diligence 17 in regards to the property. They came back to us in 18 -- and I use "us" as I'm speaking with -- about 19 myself and the ownership group -- came back to us in 20 mid-February after looking at all the available 21 data. And they were interested in, really, getting 22 their own new site plan entitlement for the property 23 that would give them an additional four units of 24 density. 25 Q. And so did you agree to extend the</p>	<p style="text-align: right;">25</p> <p>1 approval was set to expire in early December of 2 2017. And so one of my questions was: What happens 3 if I butt up against that date and Toll has not -- 4 is not in a position to get approval on their 5 entitlement? 6 Q. And so how did you get those answers -- 7 questions answered? 8 A. So we had that meeting with Sarah, and I 9 had those specific questions for Sarah. And Sarah 10 responded with -- in a nutshell, that our project, 11 our SPE, would be put on -- on hold while Toll was 12 working through -- through their process. She -- we 13 -- she laid out a couple of time -- a couple of 14 timelines in that meeting that -- one was if they 15 went down the -- the prep submittal process, the 16 other being going through the formal submittal 17 process. Both of those timelines had -- they stayed 18 within -- you know, the -- the expectations of those 19 timelines, Toll would have worked through their 20 application and had their approval in place prior to 21 our expiration. 22 The other -- the other question was, well, 23 if that -- you know, I mean, I've been in this 24 business a long time. And -- and timelines, while 25 they're -- they're wonderful to lay out and there's</p>

<p style="text-align: right;">26</p> <p>1 an expectation for that timeline, if we don't meet 2 those timelines and if Toll's not able to work 3 through the process in that period of time and I 4 bump up against that December 8th expiration, what 5 will happen when I -- when -- when we request an -- 6 need to request an extension of our approval? 7 And -- and Sarah's response in that 8 meeting was that the work that Toll was doing on 9 their SPE would -- if when we got to -- if we got to 10 that point, that would qualify us for a one-year 11 extension. Additional extensions would need to be 12 revisited each year after that. 13 Q. So did Ms. Pyle follow up on that 14 conversation? 15 A. She did. She sent a follow-up email the 16 next day. 17 Q. And did that confirm everything she had 18 told you in the -- in the meeting with regard to 19 filing for an extension? 20 A. Yes, it did. 21 Q. So is that -- here, I'm going to give you 22 the -- here in my book. So -- and is that email 23 Exhibit A-3? A 24 A. Yes, it is. 25 Q. And in that email, what did Ms. Pyle say</p>	<p style="text-align: right;">28</p> <p>1 never know all the different things that you will 2 run into. But it was her best-guess estimate of 3 what Toll could expect to move through the 4 entitlement process. 5 Q. And was there also an element in that that 6 it -- it would give you a heads up if they were not 7 on schedule and you would need to submit for an 8 extension? 9 A. Well, I stayed in pretty close contact 10 with Toll throughout the whole process. So I knew 11 where they were as they were working through. 12 Eventually, they took feasibility, and they moved 13 forward with their site plan entitlement process. 14 So I stayed in pretty -- in close contact with Aaron 15 Hollingbery and Will Greene at Toll, so I knew where 16 they were in that process. 17 So it became apparent to me in mid-summer 18 of 2017 that that timeline was not going to be able 19 to be adhered to. 20 Q. And do you know why it had stalled? 21 A. I think for a variety of reasons. But I 22 do know that there became a lot of dialogue between 23 City staff and the neighborhood group in regard to 24 Toll's application. And I -- I think that was the 25 primary reason things kind of just slowed down until</p>
<p style="text-align: right;">27</p> <p>1 with regard to an application for extension? 2 A. To my knowledge, I don't -- and I can read 3 through this -- I don't believe we really -- and she 4 addressed an application for the extension. 5 Q. Did she say in that email that you 6 qualified? 7 A. Yeah, I'm -- did she say that I qualified? 8 I -- I -- she said that the work that Toll was doing 9 would qualify us for a one-year extension. I knew 10 that I would have to apply for that extension, so we 11 didn't really talk about that I would have to make a 12 request for it. I think that was fairly well known 13 that that would have to happen. 14 Q. So she -- but she did in the email say 15 that you would qualify for an extension should you 16 apply based on Toll's construction delays. 17 A. That's correct. 18 Q. Okay. 19 A. Mm-hmm. 20 Q. Thank you. So when you said that she set 21 forth a timeline, was that a set-in-stone timeline, 22 or was that a sort of best-case-scenario timeline? 23 A. It was a reasonable expectation of a 24 timeline, as I stated earlier. I mean, in this 25 business, timelines are always difficult because you</p>	<p style="text-align: right;">29</p> <p>1 all -- well, there were a number of questions that 2 needed to be answered. 3 Q. In mid-September, did you receive an email 4 from Will Greene of Toll Brothers introducing you to 5 Planner Ben Sticka, who was also on the email? 6 A. I did. 7 Q. And is that email string Exhibit A-4 and, 8 specifically, page 3 of Exhibit A-4? 9 A. Yes, it is. 10 Q. And in that email string on September 11 15th, did you tell Mr. Sticka that Wilmoor would 12 submit a request for an extension? 13 A. I did. 14 Q. And when did he suggest you submit the 15 extension? 16 A. Well, Ben had suggested -- and I -- I 17 don't think that came directly to me, if I recall. 18 I -- I'd have to read through this. But I believe 19 he made that -- his original conversations were with 20 Will Greene from Toll. And then Will introduced -- 21 kind of introduced Ben and I to each other. Ben had 22 suggested that that extension request go in at least 23 a month prior to the expiration. 24 Q. And did you submit a request for 25 extension?</p>

<p style="text-align: right;">30</p> <p>1 A. I did.</p> <p>2 Q. And what was the justification for the</p> <p>3 extension you gave in your extension request?</p> <p>4 A. My justification was pretty much right out</p> <p>5 of the conversations that I had had with Sarah Pyle.</p> <p>6 And so I had based my extension request on the work</p> <p>7 that Toll was doing on their SPE application.</p> <p>8 Q. And is that Exhibit A-5?</p> <p>9 A. It is.</p> <p>10 Q. Thank you. And what was your plan in the</p> <p>11 event your request for extension was denied?</p> <p>12 A. About a year earlier, Core Design had done</p> <p>13 all of our engineering on the project, and I had</p> <p>14 been in -- in touch with Core to find out two things</p> <p>15 -- an approximate cost in schedule to move forward</p> <p>16 into our civil drawings. So we were at a place that</p> <p>17 -- it had -- had a -- had we been denied, we would</p> <p>18 have moved forward with civil -- our civil design</p> <p>19 and civil engineering for the project.</p> <p>20 Q. And did you have enough time to do that</p> <p>21 with your SPE expiring the second week of December?</p> <p>22 A. Well, we had enough time to make pretty</p> <p>23 significant progress on that. I don't know that we</p> <p>24 would have gotten through the whole process of -- of</p> <p>25 the civils, but we would have had definitely enough</p>	<p style="text-align: right;">32</p> <p>1 letter, I believe, the next day or two days later.</p> <p>2 I don't recall exactly which day.</p> <p>3 Q. And is that page 4 of Exhibit A-4 --</p> <p>4 excuse me -- page 1 of Exhibit A-4. No, the -- the</p> <p>5 emails is -- is page 1 of Exhibit A-4 -- excuse me -</p> <p>6 - and the letter is page 4 of Exhibit A-4. I'm</p> <p>7 confusing myself.</p> <p>8 A. It is.</p> <p>9 Q. And was that letter signed?</p> <p>10 A. It was not.</p> <p>11 Q. Did you receive a signed letter?</p> <p>12 A. I did not.</p> <p>13 Q. Did you follow up to find out what was</p> <p>14 going on?</p> <p>15 A. I believe I called Ben once, maybe twice</p> <p>16 in the following few weeks. I -- I really wasn't</p> <p>17 too concerned about it. I called to ask if that</p> <p>18 signed letter was coming my way, but that -- I</p> <p>19 really did nothing more than that.</p> <p>20 Q. Did he respond to your inquiry?</p> <p>21 A. He was fairly vague in -- in his response</p> <p>22 to why I -- I did not have a signed letter. But I -</p> <p>23 - you know, as I said, I really wasn't too concerned</p> <p>24 about getting it.</p> <p>25 Q. And why weren't you concerned?</p>
<p style="text-align: right;">31</p> <p>1 time to make substantial progress.</p> <p>2 Q. But your request for an extension was not</p> <p>3 denied; was it?</p> <p>4 A. No, it was not.</p> <p>5 Q. And what did you learn about the City's</p> <p>6 approval of your extension?</p> <p>7 A. And I believe the date was September 20th</p> <p>8 when Toll had their neighborhood meeting here at</p> <p>9 City Hall to discuss their application. I attended</p> <p>10 that meeting that evening. And as I came into that</p> <p>11 meeting, Ben was the first one -- Ben Sticka was the</p> <p>12 first person that I met. I asked Ben how did it go</p> <p>13 that day at the technical -- Technical Committee</p> <p>14 meeting. And Ben informed me at that point that I</p> <p>15 had been approved.</p> <p>16 Q. And did you see Planning Director Karen</p> <p>17 Anderson at that same community meeting?</p> <p>18 A. I did. I had never met Ms. Anderson. I</p> <p>19 sat down. She happened to sit down next to me. I</p> <p>20 introduced myself. She introduced herself. And</p> <p>21 then she also informed me that I had been approved</p> <p>22 earlier that day at the Technical Committee.</p> <p>23 Q. And did Mr. Sticka follow up with you</p> <p>24 after that September 20th community meeting?</p> <p>25 A. He did. He sent me a copy of my approval</p>	<p style="text-align: right;">33</p> <p>1 A. Because I'd been approved.</p> <p>2 Q. Because they told you you had been</p> <p>3 approved.</p> <p>4 A. They had told me I'd been approved, yeah.</p> <p>5 Q. And when was the next time you heard from</p> <p>6 Mr. Sticka or anyone else at the City?</p> <p>7 A. I received an email from Ben in early</p> <p>8 November telling me that they -- the City was going</p> <p>9 to ask me to go through a 21-day posting period.</p> <p>10 Q. And is that Exhibit A-10?</p> <p>11 A. It is.</p> <p>12 Q. And what did he say in that email?</p> <p>13 A. Well, what he tells me is he had an answer</p> <p>14 regarding the extension of my project and that a</p> <p>15 Notice of Application will be sent out for that</p> <p>16 posting period. I thought it was kind of odd</p> <p>17 because I didn't know that I had any questions, and</p> <p>18 he had an answer to my question. But it really --</p> <p>19 our -- our conversation was -- I think I may have</p> <p>20 called him and followed up on that. But it was</p> <p>21 fairly brief, and I really didn't think a whole</p> <p>22 bunch of it.</p> <p>23 Q. So what did you understand it to mean?</p> <p>24 A. I -- to be honest with you, I really</p> <p>25 thought it was dotting Is and crossing Ts from the</p>

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1 City's perspective that they were going to -- I know
 2 that they had had some comments and some
 3 communication had come from some of the neighbors.
 4 And I really thought that -- that we were going to
 5 have a 21-day posting period so some of those
 6 comments could be included into the file.
 7 Q. But he -- he didn't say exactly why he
 8 needed this?
 9 A. No.
 10 Q. And he didn't indicate that it was a
 11 process that the City always followed and had just
 12 forgotten to do it?
 13 A. Well, that -- that was a question that I
 14 had had for Ben that day. I said okay. And well --
 15 and -- and I called him after I had received this
 16 email. And my question was: Is this a process that
 17 has been used in the past for entitlement
 18 extensions? And he said no, but it was going to be
 19 the policy moving forward.
 20 Q. Beginning with your application?
 21 A. Correct.
 22 Q. And did you have any understanding of why
 23 the City was adding this new requirement?
 24 A. No. I had no idea other than, again, some
 25 -- I think that they had just received some dialogue

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1 from a number of the neighbors.
 2 Q. Did you object to Mr. Sticka's request
 3 that the Notice of Application be posted?
 4 A. I did not.
 5 Q. And again, were you concerned that somehow
 6 your extension approval might be in jeopardy?
 7 A. I -- I -- I did not. I -- I was not real
 8 -- I was not concerned about my approval. I really
 9 thought that this was just an administrative process
 10 to, you know, tighten up and, again, dot Is and
 11 cross Ts as part of the file.
 12 Q. And what was your next communication with
 13 Mr. Sticka?
 14 A. My next communication was I received --
 15 and I don't remember if it was an -- a phone call or
 16 an email. It was late November, 1st of December,
 17 thereabouts. Ben called me and asked me for a copy
 18 of the purchase and sale agreement with Toll.
 19 Q. And did you comply with that request?
 20 A. No. I declined that request.
 21 Q. Why is that?
 22 A. Just there's confidential information in a
 23 purchase and sale agreement.
 24 Q. And did you hear from Mr. Sticka again
 25 regarding that contract?

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1 A. I don't know that I heard again from Ben.
 2 I might have been part of that same conversation. I
 3 offered to provide a letter on my letterhead stating
 4 that Toll had the property under contract.
 5 Q. And what was your understanding of the
 6 City's need for that?
 7 A. Well, I had based my extension request on
 8 the work that Toll was doing. So again, I assumed
 9 it was just confirmation in their file that Toll had
 10 the ability to purchase the property.
 11 Q. But Mr. Sticka -- did he ever tell you why
 12 he needed this information?
 13 A. He did not.
 14 Q. And then when did you next hear from
 15 anyone at the City? Oh, I'm sorry. Did you provide
 16 the letter?
 17 A. I did.
 18 Q. And what was the date of that letter?
 19 A. I don't recall. It was about December
 20 6th, there -- somewhere in that neighborhood.
 21 Q. Was that Exhibit -- I'm sorry -- is that
 22 Exhibit A-15?
 23 A. It is.
 24 Q. And that's dated --
 25 A. December the 6th --

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1 Q. Thank you.
 2 A. -- of 2017.
 3 Q. And then when did you next hear from
 4 anyone at the City?
 5 A. My next communication was -- I received an
 6 email from Ben with an attached denial letter for my
 7 extension request.
 8 Q. And is that Exhibit A-15 -- excuse me --
 9 Exhibit A-16?
 10 A. Yes, it is.
 11 Q. And in that letter, the December 8th
 12 letter, that's attached as Exhibit A-16, what did
 13 the City say it was denying?
 14 A. Can you repeat that question?
 15 Q. What did the City say it was denying?
 16 A. They were denying my extension.
 17 Q. Your extension dated September 20th?
 18 A. They were -- no, they -- they were denying
 19 my extension request, which was dated December 6th.
 20 Q. And had you submitted a request for an
 21 extension on December 6th?
 22 A. No, I had not.
 23 Q. Have you ever submitted an extension
 24 request other than the one you submitted on
 25 September 18th?

38	<p>1 A. No.</p> <p>2 Q. And what did you do when you received this</p> <p>3 letter from the City, this December 8th letter from</p> <p>4 the City?</p> <p>5 A. I called Ben that's -- day that I received</p> <p>6 the denial letter and telling him about the -- the</p> <p>7 error in the letter, and I asked for a corrected</p> <p>8 letter referencing my September request.</p> <p>9 Q. So when you say the error in the letter,</p> <p>10 you're referring to the fact that the letter says</p> <p>11 that there was an extension request on December 6th?</p> <p>12 A. Correct.</p> <p>13 Q. And so what did -- why did you feel it was</p> <p>14 important to have that extension request date</p> <p>15 corrected?</p> <p>16 A. Well, I thought it was important because,</p> <p>17 again, if this -- and we had talked about that prior</p> <p>18 -- but if this denial had happened back in that</p> <p>19 period when I had made that extension request, we</p> <p>20 had plenty of time to move forward and make</p> <p>21 substantial progress on this application.</p> <p>22 Q. So did Mr. Sticka comply with your request</p> <p>23 to correct the denial letter?</p> <p>24 A. No. I was -- I was told that the letter</p> <p>25 would not be corrected.</p>	40
39	<p>1 Q. And was that -- did he tell you that on</p> <p>2 the phone, or did he tell you that by email?</p> <p>3 A. I believe he told me that both in -- in --</p> <p>4 both. I -- but I do believe there was an email that</p> <p>5 reflected that.</p> <p>6 Q. Is that Exhibit A-17? Exhibit A-17.</p> <p>7 Back.</p> <p>8 A. Oh, thank you. It is.</p> <p>9 Q. Then what did you do then?</p> <p>10 A. We filed our appeal.</p> <p>11 Q. And on what basis did you appeal? Perhaps</p> <p>12 you could read from -- and excuse me. Is your</p> <p>13 appeal Exhibit A-18?</p> <p>14 A. It is.</p> <p>15 Q. And did you have an attachment to that</p> <p>16 appeal explaining why you were appealing?</p> <p>17 A. I did.</p> <p>18 Q. And perhaps you could read the -- the</p> <p>19 statement where you say why the City erred in its</p> <p>20 decision.</p> <p>21 A. "The City erred in its decision on this</p> <p>22 extension request. This extension qualifies under</p> <p>23 both paragraph C and D of the above referenced</p> <p>24 conditions," which list the City conditions for an</p> <p>25 extension. "The applicant has been working with</p>	41

42	<p>1 try to move the project along at the City level 2 during that time period? 3 A. No. 4 Q. And between the time you sold the property 5 to Toll in December 2016 and mid-February when you 6 said you met with Ms. Pyle, did you submit any civil 7 construction drawings? 8 A. No. 9 Q. Did you make any contact with the City to 10 try to move the project forward? 11 A. No. 12 Q. Now, when you met with Ms. Pyle in 13 February of 2017, didn't Ms. Pyle encourage both you 14 and the Toll representatives to submit the Toll 15 application as soon as possible? 16 A. Probably. 17 Q. Do you know when the application was 18 submitted by Toll? 19 A. I believe in August of 2017. 20 Q. So between February of 2017 and August 21 2017, there was no application submitted by Toll? 22 A. Correct. 23 Q. And there was no civil construction 24 drawings submitted by you? 25 A. No.</p>	44	<p>1 civil drawings to meet the requirements of the SPE 2 but did not do so because the City had approved the 3 extension." You see that? 4 A. I do see that. 5 Q. When were you in a position to submit 6 civil drawings? 7 A. I was in a position to give Core Design 8 the go-ahead to work on and submit those civil 9 drawings. 10 Q. You didn't have those civil drawings 11 completed at that time. 12 A. No, I did not. 13 Q. And you could have completed those civil 14 drawings at any time between December 2015 and the 15 time you asked for an extension; could you not? 16 A. Yes. 17 Q. And you didn't do that. 18 A. Correct. 19 Q. And that would have been the next step to 20 take the project forward; would it not? 21 A. Correct. 22 Q. In fact, that would have been all you 23 would have needed, civil construction approval, to 24 begin construction of the project; isn't that true? 25 A. Not totally true. I'd have to -- I'd have</p>
43	<p>1 Q. And did you take any other steps to move 2 the project forward during that time period? 3 A. My project or Toll's project? 4 Q. Your project. 5 A. No. 6 Q. Now, you referred to Ms. Pyle's email to 7 you, which was Exhibit A-3. And you said that there 8 were a couple of different processes that were 9 listed. Do you recall that? 10 A. Correct. 11 Q. Which process did Toll take, if you 12 recall? 13 A. I believe Toll submitted under the formal 14 process. 15 Q. Okay. So the -- there is a prep process, 16 and then there is a formal process. And Toll 17 submitted under the formal process? 18 A. That's my understanding, yes. 19 Q. I believe you said in your declaration, 20 which is Exhibit A-1 -- you submitted a declaration 21 in support of your appeal? 22 A. Yes. 23 Q. And you say in that declaration on page -- 24 let's see -- it is on page 4, paragraph 9 -- you 25 say, "I was in a position at that time to submit</p>	45	<p>1 bonds. Other -- there would be other things 2 required to construct the project, but you would 3 have to have the civil construction drawings to move 4 forward. 5 Q. And the civil construction drawings would 6 have been what the City would have given you 7 approval for, which would allowed you -- that 8 allowed you to go forward. 9 A. Correct. 10 Q. And you didn't submit those civil drawings 11 at any time during this process. 12 A. No. 13 MR. HANEY: May I just have one minute? 14 I have no further questions for this 15 witness. 16 THE HEARING EXAMINER: Great. Thank you. 17 In fact, I have one question. The rules 18 of -- of the Hearing Examiner do allow me to ask 19 questions of witnesses as well. 20 EXAMINATION 21 BY THE HEARING EXAMINER: 22 Q. Mr. Wilson, without, you know, revealing 23 confidential details of the PSA, just so I can wrap 24 my mind around what the agreement here entails, is 25 it -- do you have a reversionary interest if -- if</p>

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1 things fall through with Toll? Is that the idea
 2 behind all of this, meaning if -- if Toll did not
 3 move forward with its own project, you would have
 4 the opportunity to still develop this site? I'm
 5 just trying to wrap my head around why we're here.
 6 A. So that was part of my meeting with --
 7 with Sarah Pyle, what -- what would happen to our
 8 approval. So what -- when Toll's application was
 9 ready to be approved, we would have the option as
 10 the current owners of an approved project to either
 11 allow ours to step aside so theirs could be
 12 approved, or we could continue to have ours be the
 13 approved project.
 14 Q. Okay. I guess my confusion was because
 15 Mr. Haney several times referenced sale of the
 16 property in 2016, I think it was -- or December
 17 2016.
 18 A. That's when Toll took it under contract.
 19 Q. So can you clarify for me in a general --
 20 just general building terms the difference between
 21 taking something under contract and selling a
 22 property.
 23 A. Well, selling would be going through the
 24 closing process of changing title, transferring
 25 title.

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1 Q. Like in fee simple?
 2 A. Correct.
 3 Q. Is that the idea?
 4 A. Mm-hmm.
 5 Q. Okay.
 6 MS. ORRICO: Would you like me to clarify,
 7 Mr. --
 8 THE HEARING EXAMINER: Please.
 9 MS. ORRICO: -- Examiner?
 10 So Toll is under contract is like you say
 11 I'm going to buy your house.
 12 THE HEARING EXAMINER: Right.
 13 MS. ORRICO: But then you go through your
 14 inspection and all this other stuff. And then all
 15 of those Ts are crossed and Is are dotted. And then
 16 you close, and then you own the property. We're
 17 still in that middle where they're crossing their Ts
 18 and dotting their Is and getting their own approvals
 19 from the City. If they don't get that approval from
 20 the City, you're absolutely correct in what you were
 21 surmising. It would revert back to Wilmoor's SPE,
 22 which is --
 23 THE HEARING EXAMINER: Okay.
 24 MS. ORRICO: -- why they wanted to keep it
 25 current.

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1 THE HEARING EXAMINER: I guess I kind of
 2 used the legal term of art. But a reversionary
 3 interest -- does that --
 4 MS. ORRICO: Yes. Basically --
 5 THE HEARING EXAMINER: Okay.
 6 MS. ORRICO: -- if -- if Toll doesn't
 7 proceed with its application, it will likely
 8 terminate the contract with Wilmoor. And then
 9 Wilmoor still owns the property, and they wanted to
 10 ensure that they still had the SPE --
 11 THE HEARING EXAMINER: Sure.
 12 MS. ORRICO: -- to develop it.
 13 THE HEARING EXAMINER: Okay. Thank you.
 14 I -- I assumed that's what the situation was, but I
 15 got a little tripped up there in the middle.
 16 MR. HANEY: Mr. Examiner, based on your --
 17 THE HEARING EXAMINER: Mr. Haney.
 18 MR. HANEY: -- questions, may I ask a
 19 couple --
 20 THE HEARING EXAMINER: Certain --
 21 MR. HANEY: -- additional questions of the
 22 witness?
 23 RECROSS-EXAMINATION
 24 BY MR. HANEY:
 25 Q. Mr. Wilson, you -- you and Ms. Orrico have

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1 explained the relationship you -- you had with Toll.
 2 You said that the property was under contract with
 3 Toll; is that correct?
 4 A. That is correct.
 5 Q. And you do realize that under the City's
 6 extension procedure, one of the possible bases for
 7 extension is a change in ownership of the property?
 8 A. Correct.
 9 Q. The change -- the property has not changed
 10 ownership at this time; has it?
 11 A. No, it has not.
 12 Q. And when you requested your extension, you
 13 didn't make that request under the change in
 14 ownership criteria, correct?
 15 A. I did not.
 16 Q. And your appeal today doesn't allege that
 17 the ownership has changed such that you met the
 18 criteria for an extension, correct?
 19 A. We did not use the change of ownership as
 20 a basis for our extension request.
 21 MR. HANEY: Thank you. I have no further
 22 questions.
 23 THE HEARING EXAMINER: Anything further?
 24 MS. ORRICO: No, thank you.
 25 THE HEARING EXAMINER: I believe we're

<p style="text-align: right;">50</p> <p>1 done with this witness. Thank you. 2 MS. ORRICO: I have no more witnesses at 3 this time. 4 THE HEARING EXAMINER: Okay. Thank you. 5 I -- 6 MS. ORRICO: But I do reserve the right to 7 call a rebuttal witness. 8 THE HEARING EXAMINER: Certainly. 9 MS. ORRICO: Sorry. 10 THE HEARING EXAMINER: Of course. And 11 you'll also, obviously, have the opportunity to 12 cross-examine any of the City's witnesses. 13 Does the City need a minute before it 14 proceeds, or is the City ready to proceed? I know 15 sometimes when one side closes, the other side would 16 like a few minutes. I'm fine with that. Just let 17 me know how you'd like to move forward. 18 MR. HANEY: Well, I know that -- actually, 19 I was expecting Ms. Orrico to call more witnesses -- 20 THE HEARING EXAMINER: As was I. 21 MR. HANEY: -- since she had asked my 22 witnesses to be here. So -- so -- but I'm -- I'm 23 prepared to proceed. 24 THE HEARING EXAMINER: Okay. Please 25 proceed then.</p>	<p style="text-align: right;">52</p> <p>1 come in relevant to current planning projects as 2 well as provide answers to general staff questions, 3 training, and work on other various projects that 4 pertain to development services. 5 Q. And can you tell us what your planning 6 experience has been? 7 A. I've worked for the City of Redmond for a 8 little over three years now. And previously, I 9 worked for the City of New Castle in the planning 10 department there as well as the City of Renton. 11 Q. Were you with the City of Redmond in 12 December of 2015 when the Wilmoor project was 13 approved? 14 A. I was. 15 Q. Were you assigned to the project at that 16 time? 17 A. In December I was. 18 Q. Can you tell us -- when an applicant 19 receives a development approval from the City as 20 Wilmoor did in December of 2015, what is the next 21 step that an applicant goes through in order to 22 develop? 23 A. Typically, they follow the instructions on 24 the front page of the approval, which is to proceed 25 into the civil construction review.</p>
<p style="text-align: right;">51</p> <p>1 MR. HANEY: I'll call Sarah Pyle. 2 Sorry, Ms. Pyle. And if you could -- 3 wherever. I -- I think the Examiner would like to 4 be able to see you. So if you can make eye contact 5 from wherever you are. 6 THE HEARING EXAMINER: One over would be 7 perfect. And we know that mic works because it was 8 already used. Thank you for being here. If I could 9 just swear you in first. 10 SARAH PYLE, called as a witness on behalf of the 11 City of Redmond, having been first duly sworn, was 12 examined and testified as follows: 13 THE HEARING EXAMINER: Great. Thank you. 14 DIRECT EXAMINATION 15 BY MR. HANEY: 16 Q. Please state your full name and spell your 17 last name for the record. 18 A. It's Sarah Pyle, P-y-l-e. 19 Q. And Ms. Pyle, what is your current 20 position with the City of Redmond? 21 A. Senior planner. 22 Q. And can you describe for us your duties as 23 senior planner? 24 A. I am a project manager on development 25 applications and environmental applications that</p>	<p style="text-align: right;">53</p> <p>1 Q. And can you describe that civil 2 construction review process for us? 3 A. Yes. That looks at the site construction 4 -- so grading, planning for the storm water, 5 detention, paving, setting foundations in place, 6 curb cuts, installing utilities, and landscaping, or 7 any type of mitigation that's required. 8 Q. Now, were you continuing to be assigned to 9 the Wilmoor project between December 15th -- 10 December 2015 and February 2017? 11 A. It is likely, had they come in for civil 12 construction, I would have been the planner 13 reviewing the civil construction permit. 14 Q. And did they come in for a civil 15 construction drawing review? 16 A. They did not. 17 Q. Did -- were you contacted in any way by 18 Mr. Wilson or -- or any other representatives of 19 Wilmoor during that time period in order to move the 20 project forward for development? 21 A. I do not recall being contacted in any 22 way. 23 Q. Now, Mr. Wilson talked about a 24 conversation that you had with him and 25 representatives of Toll in February of 2017. You</p>

<p style="text-align: right;">54</p> <p>1 recall that? 2 A. I do. 3 Q. Do you recall that conversation? 4 A. I do. 5 Q. Generally speaking, is Mr. Wilson's 6 characterization of what happened during that 7 conversation accurate? 8 A. Most of it is a -- is accurate context. 9 There are some elements that are not accurate. 10 Q. Okay. And can you tell us what elements 11 are not accurate in that conversation? 12 A. Mr. Wilson mentioned that the SPE would be 13 put on hold. That is not a permitting option for an 14 approved document, and we wouldn't have put an 15 approved document on hold. Once a -- once -- once 16 an SPE is approved it is in the applicant's court to 17 go ahead and proceed forward how they would like to, 18 whether they would like to develop their project or 19 not, a time. 20 Q. So what do you understand is meant by the 21 term "on hold" that Mr. Wilson used? 22 A. That would be a voluntary decision to not 23 pursue that SPE while Toll Brothers pursued a new 24 design and new SPE. 25 Q. Was Mr. Wilson pursuing the Wilmoor site</p>	<p style="text-align: right;">56</p> <p>1 designer desires. 2 During that conversation, it was discussed 3 with staff over and over again that they would be 4 coming in right away. Staff communicated please 5 come in right away if you are wanting to stay on 6 your desired schedule. 7 Greg also mentioned the discussion of 8 approvals several times. And related to Toll, staff 9 in the email and in person only ever discussed dates 10 to a decision issuance -- not even that Toll would 11 gain an approval, but that this was the process to a 12 decision being issued on the project and that I 13 would be leaving for maternity leave on April 7th. 14 And while I would be gone, it was important for them 15 if they wanted to hit these target dates they had 16 discussed multiple times that they get their project 17 in so that Planning could provide them comments that 18 they could work on while I was away. 19 All the way up until April, staff 20 continued communicating with both parties that we 21 were approaching a date in which I would not be able 22 to review soon and that they would have to proceed 23 and wait for planning comments. When I came back 24 from maternity leave, they still had not applied for 25 the application at that time.</p>
<p style="text-align: right;">55</p> <p>1 plan entitlement at any time up to February 2 -- or 2 February 2017? 3 A. I do not recall them -- Wilmoor pursuing 4 it in any way. 5 Q. So what -- what would have been put on 6 hold at that time, if anything? 7 A. From the City, nothing. 8 Q. What else is -- you -- you mentioned that 9 parts of it were accurate and parts of it were 10 inaccurate. What -- what else was inaccurate? 11 A. The conversation regarding the extension 12 in the projects and Toll's involvement in becoming 13 under contract and the feasibility period was all 14 discussed with Greg, Will, and Aaron from Toll 15 Brothers. The discussion really did more so around 16 the timing of the project, and Greg was present at 17 the meeting and -- to ask questions about how that 18 would align if they did an -- it was accurate if it 19 came -- kind of butted up against the December date. 20 At that time in -- during that meeting, 21 previous discussions, and all the discussions that 22 followed, Toll was going to be coming in 23 immediately, and they were working to resolve a 24 couple engineering design issues that had -- had 25 kind of come up and were in conflict with their</p>	<p style="text-align: right;">57</p> <p>1 Q. Okay. Well, I want to unpack that a 2 little bit and -- 3 A. Okay. 4 Q. -- go back to -- go back to that February 5 conversation. Now, as I understood Mr. Wilson's 6 testimony -- and I -- I'm -- I'll try not to 7 mischaracterize it. I was keeping notes, but -- but 8 as I understood his testimony, he was concerned 9 about what if the Toll Brothers application was a 10 certain portion down the road and that additional 11 time was needed and about the extension under those 12 circumstances? Can you -- can you talk about that a 13 little bit? 14 A. Yes. The specific scope of the discussion 15 that was just about that, was what if they are 16 having loose ends. So maybe they had a couple 17 things that were just clean-up items, which can 18 happen at the end, whether it's, you know, updating 19 line weights or small items that would not be 20 considered design changes at the end that could 21 cause a week to three weeks of delay and that butted 22 up against for insurance. Would he still be 23 entitled to pursuing an extension for his 24 expiration? 25 At that time, it was discussed prior to</p>

<p style="text-align: right;">58</p> <p>1 the email being sent out internally. If Toll had 2 gone through the whole process and Greg had remained 3 part of that process, including the engineering 4 design, and they came up to the very end, would the 5 current leadership consider that substantial. And 6 at that time, if they had come in in February and 7 they had then worked for six months on the project 8 and were three months out from a decision being 9 issued, it was determined that that would be 10 considered very substantial, but that it would 11 require during our conversation that they have a fee 12 application in that had been under review for six 13 months.</p> <p>14 Q. Did you -- you mentioned that you went on 15 maternity leave in April; is that correct?</p> <p>16 A. I -- that's correct.</p> <p>17 Q. April of 2017.</p> <p>18 A. Mm-hmm.</p> <p>19 Q. Did you express to them -- and I -- I 20 think you testified to this. But again, I'm trying 21 to unpack your -- your testimony a little bit. Did 22 you testify that that created some urgency as far as 23 you telling them that Toll needed to get its 24 application in?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">60</p> <p>1 me. I guess we're -- we're now talking about the 2 Toll project. Did the developer of the Toll project 3 submit an application before you went on maternity 4 leave?</p> <p>5 A. No.</p> <p>6 Q. And how long were you out on maternity 7 leave?</p> <p>8 A. I was out completely for four weeks and 9 then back full time after -- or back in the office 10 after six weeks.</p> <p>11 Q. And did you -- at any time prior to going 12 on maternity leave, did you try to encourage them 13 again to submit an application prior to you leaving?</p> <p>14 A. I spoke with Toll Brothers regularly and 15 encouraged them regularly to submit an application.</p> <p>16 Q. And what about when you returned from 17 maternity leave? Were you still assigned on this 18 project?</p> <p>19 A. I was still assigned on the project at 20 that time, and I checked in with them almost right 21 away when I returned because I was surprised to see 22 it hadn't been applied for.</p> <p>23 Q. And did you encourage them to submit at 24 that time when you returned from maternity leave?</p> <p>25 A. I did, and I asked what their ETA was on a</p>
<p style="text-align: right;">59</p> <p>1 Q. And -- and can you explain that again?</p> <p>2 A. I expressed that, while they could apply - 3 - Greg could apply at any time for an extension 4 request, but even per their concern, they needed to 5 get their application in to meet their project 6 deadlines and to ensure there was a clear path ahead 7 of the expiration of his application to a decision 8 being issued and that I would not be able to provide 9 comments in review if it was not turned in or 10 applied for and a fee paid for on the application 11 immediately.</p> <p>12 Q. So was the idea of the urgency of trying 13 to get it filed in -- before April, was that because 14 you were concerned about the project not being at 15 that stage of only having a few things left by the 16 time an extension was necessary?</p> <p>17 A. It was for a couple reasons of customer 18 service -- that was one of them -- and ensuring that 19 they had advanced information and understood the 20 time that -- that things would take to review, but 21 also so that they would have the information again 22 in advance of me leaving to work on for any type of 23 land use comments that might come up under the 24 review.</p> <p>25 Q. And did Mr. Wilson and Wilmoor -- excuse</p>	<p style="text-align: right;">61</p> <p>1 applying for it.</p> <p>2 Q. And when was the application finally 3 submitted?</p> <p>4 A. To my understanding, not until August.</p> <p>5 Q. Were you the planner assigned to the Toll 6 project when it came in in August?</p> <p>7 A. I was not.</p> <p>8 Q. So you are not the person who processed 9 the application at that point in the extension 10 request.</p> <p>11 A. No.</p> <p>12 MR. HANEY: I have no further questions 13 for Ms. Pyle.</p> <p>14 THE HEARING EXAMINER: Cross-examination?</p> <p>15 MS. ORRICO: Yes, Mr. Examiner.</p> <p>16 CROSS-EXAMINATION 17 BY MS. ORRICO:</p> <p>18 Q. So again, I want to break it down a little 19 bit --</p> <p>20 A. Okay.</p> <p>21 Q. -- because there were a lot of "thems" in 22 there.</p> <p>23 A. Yes.</p> <p>24 Q. And I want you to be clear on when you say 25 your conversations -- you -- you encouraged them to</p>

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1 submit it, you encouraged them to submit it. Are
 2 you speaking of Wilmoor or of Toll Brothers?
 3 A. A little bit of both. At all of the
 4 meetings that I met with Greg, Toll was present.
 5 And so -- and they had -- were asking questions or
 6 in conjunction. While it was Toll's project that
 7 was being encouraged to be submitted, the meetings
 8 where most of those conversations happened or any
 9 time I met in person with Greg, Toll -- one -- at
 10 least one, Will or Aaron, was present.
 11 Q. But let's flip that. When you're meeting
 12 with Toll, is Greg always there?
 13 A. No.
 14 Q. Okay. So in a lot -- Mr. Haney asked you
 15 several questions about you were encouraging them to
 16 submit their engineering and everything they needed
 17 to get their site plan entitlement. When you're
 18 saying "them," are you referring to Toll?
 19 A. Yes.
 20 Q. And so not Wilmoor.
 21 A. Correct.
 22 Q. And is it your understanding that Wilmoor
 23 had the authority to submit anything on behalf of
 24 Toll?
 25 A. No, not on behalf of Toll.

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1 Q. Now, you said you've been a planner for a
 2 long time. And I've worked with you before, and I
 3 would agree with your level of experience. Is it
 4 common for property owners to get entitlements
 5 approved on a property and then sell it to another
 6 developer to -- to actually do the construction?
 7 A. It is not uncommon.
 8 Q. So you're familiar with that --
 9 A. Yes.
 10 Q. -- process. And -- and in that scenario
 11 where someone's gotten the entitlements and then
 12 they're selling the property -- it's under contract
 13 -- would the property owner be doing anything with
 14 regard to the applications, or would they leave it
 15 to the -- the developer under contract to submit
 16 their applications?
 17 A. I think that that would be a case-by-case
 18 decision by the private developers.
 19 Q. But it's not uncommon that, once the
 20 property owner gets their site entitlement, they
 21 sell it to a new -- they -- they put it under
 22 contract to a new buyer, who then pursues the
 23 applications.
 24 A. That is not uncommon.
 25 Q. And you've referenced eligibility for

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1 extensions where you said there's, you know, loose -
 2 - you tried to get them to get everything in because
 3 if there were loose ends hanging, you might be able
 4 to approve an extension versus if it was, you know,
 5 not quite far down the road. Is that what you were
 6 saying?
 7 A. No. I was saying that if all they had
 8 left was loose ends because they had made
 9 substantial progress --
 10 Q. Who's they, please?
 11 A. Toll Brothers.
 12 Q. So can you just say that whole sentence
 13 with the
 14 A. That if Toll Brothers only had loose ends
 15 left due to the fact that they had made substantial
 16 progress under a fee application at that time, that
 17 under the direction I received in February, that it
 18 would be -- it would -- could be considered
 19 substantial at that time and if it abutted his
 20 expiration date -- him being Greg.
 21 Q. And what -- why is that significant that
 22 it would be substantial?
 23 A. Because that is a criteria in the code.
 24 Q. Or?
 25 A. An extension.

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1 Q. Thank you. So you're familiar with the
 2 code provisions regarding extensions of permits?
 3 A. Yes.
 4 MS. ORRICO: And Mr. Examiner, I'm
 5 referring to 21.76.090. And unfortunately, I only
 6 have one copy, so I'm going to give you my copy.
 7 BY MS. ORRICO:
 8 Q. Now, in 090.C.1, it references significant
 9 action on a proposed application. I'm probably not
 10 saying that exactly right, but feel free to read it
 11 if you'd like.
 12 MS. ORRICO: Do you have that, Mr.
 13 Examiner?
 14 THE HEARING EXAMINER: Is it in your
 15 brief? I -- I don't have a copy of that provision
 16 in front of me. It wasn't provided as a separate --
 17 MS. ORRICO: I guess I --
 18 THE HEARING EXAMINER: I believe it's in
 19 your brief, at least reference to it.
 20 MR. HANEY: We have a copy we can provide
 21 you.
 22 MS. ORRICO: Thank you, Mr. Haney.
 23 THE HEARING EXAMINER: Thank you.
 24 BY MS. ORRICO:
 25 Q. So perhaps you could just read Section

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1 C.1.
 2 A. "Approval of a Type I, II, or III
 3 application shall expire two years from the date of
 4 approval was final unless significant action
 5 proposed in the application has been physically
 6 commenced and remains in progress."
 7 Q. So that doesn't say anything about getting
 8 an extension. It just says you can keep working on
 9 it if you've been working on it.
 10 A. That's correct.
 11 Q. And that's what you were referring to when
 12 you were saying, you know, Toll Brothers, get your
 13 stuff in because, if there's significant action,
 14 then Wilmoor will be okay.
 15 A. Yes.
 16 Q. But then doesn't that section also say --
 17 that section being 21.76.090.C -- doesn't it say you
 18 can either make substantial -- take substantial
 19 action or apply for an extension; is that correct?
 20 A. It is correct.
 21 Q. And so when you're talking about
 22 encouraging Toll to get their submissions in and not
 23 have loose ends hanging -- or -- or -- and just have
 24 loose ends hanging at the end, that then Wilmoor
 25 will be okay with regard to their SPE being

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1 preserved. But that's not the same as applying for
 2 an extension; is that correct?
 3 A. In our conversation that took place in
 4 February was referring to them -- to Mr. -- we'll
 5 send a request -- there is a lot of "thems" -- to
 6 Mr. Wilson requesting how to approach an extension
 7 request of the permit, not how to just remain in
 8 progress for his permit. And so the discussion was
 9 more posed to C.2 --
 10 Q. Okay.
 11 A. -- in how to approach it and that it would
 12 need to have some other circumstance, such as
 13 substantial progress made on the permit or change of
 14 ownership. But in the particular discussion,
 15 because Toll was present and they were discussing
 16 this in tandem, it was about what if the design
 17 elements came up or other issues came up related to
 18 the design that caused them to have loose ends still
 19 open towards the December date.
 20 Q. But again, 21.76.090.C.1 talks about the
 21 significant action, and that's separate and distinct
 22 from C.2, which has the bases for an extension, such
 23 as unanticipated design and construction --
 24 A. Yes. C.1, though, also mentions that the
 25 application has been physically commenced.

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1 MS. ORRICO: But -- okay. Thank you. I
 2 have no further questions.
 3 MR. HANEY: I do have a bit of a redirect,
 4 if I may.
 5 THE HEARING EXAMINER: Sure. And I had a
 6 question, too. I don't know if you want to wait --
 7 MR. HANEY: Okay.
 8 THE HEARING EXAMINER: -- or --
 9 MR. HANEY: Go ahead, Mr. Examiner.
 10 THE HEARING EXAMINER: It's sort of
 11 follow-up, I suppose.
 12 EXAMINATION
 13 BY THE HEARING EXAMINER:
 14 Q. In the 30 or so jurisdictions we work in,
 15 this language of site plan entitlement is a little
 16 bit seemingly unique to Redmond. Can you just
 17 explain for me what the -- what that entitlement
 18 entails? Is this similar to a binding site plan, as
 19 the typical language in most jurisdictions? It's
 20 different from a preliminary plat, I assume.
 21 Essentially, what are the entitlements, and what do
 22 you have to accomplish during the course of your
 23 entitlements?
 24 A. It is closer to a preliminary plat than a
 25 binding site plan.

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1 Q. Okay.
 2 A. And so it precedes civil construction and
 3 a building permit, and it, essentially, is looking
 4 at a parcel that is not seeking a subdivision but is
 5 seeking the same type of entitlements that a
 6 subdivision seeks in addition to lot line additions.
 7 And so it's looking at, overall, lot
 8 coverage allowances, building placement, impervious
 9 coverage, density, and other basic land use
 10 regulations, zoning regulations that are outlined in
 11 the Redmond Zoning Code.
 12 And that entitlement then allows the
 13 applicant to proceed forward into a grading and
 14 utility infrastructure permit, which is our civil
 15 construction permit, that then mirrors the design
 16 and site layout that was approved in the site plan
 17 entitlement, which then gives them the ability to
 18 move forward to a building design.
 19 Typically, as part of a site plan
 20 entitlement is also a design review of the structure
 21 itself about the general appearance that it will
 22 have -- materials and colors. And then that is
 23 processed through a building permit, which normally
 24 begins during the site plan or the civil
 25 construction permit review.

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71	<p>1 Q. Okay. So when you look at the code in 2 27.76.090.C.1, and it talks about an approval of an 3 application shall expire two years from the date the 4 approval was final unless significant action 5 proposed in the application has been physically 6 commenced, we're talking under that section with 7 physical commencement of items proposed in the 8 Wilmoor application, correct? 9 A. That's correct. 10 Q. And that would be the basis for granting 11 an extension under that particular subsection. 12 A. Under Subsection 1, yes. 13 Q. Okay. Under Subsection 2, aren't the 14 provisions of Subsection 2 also related to the 15 Wilmoor application? In other words, does proper 16 justification under these conditions have to be 17 related to economic hardship of the Wilmoor 18 applicant or a change of ownership between the 19 owners of the Wilmoor application and proposal or 20 unanticipated construction and/or site design 21 problems relating to the Wilmoor application or 22 other unusual circumstances outside of the control 23 of the applicant for the Wilmoor application? 24 A. You are correct. 25 Q. So if that is the case, how does the</p>	<p>1 progress of the Toll Brothers application have 2 anything to do with these criteria relating to the 3 Wilmoor extension? 4 A. To reference what I responded to the 5 appellant with is that, in February and during that 6 time, Greg was an active participant in all of the 7 Toll Brothers meetings and project at that time. He 8 was at every meeting at that time and did not -- not 9 attend them until following that period of time. 10 And it did appear at that time that it was 11 an in-tandem project because it was under contract 12 and reviewing similar design elements. It is --an 13 application never came in, and Toll Brothers 14 continued the project not working in tandem. And it 15 wouldn't be. It was only the project in request, 16 and process of Toll's application would not be 17 relevant to that extension for the SPE for Wilmoor. 18 Q. And just in -- just to close the loop on 19 this, there wasn't any significant action on the 20 Wilmoor application, the Wilmoor site plan 21 entitlement, was there, within the two-year period? 22 A. No. 23 Q. No, nothing was physically commenced in 24 furtherance of the Wilmoor application during the 25 two-year period?</p>	73

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1 Q Yeah. Thank you. SPEs. It would not be
 2 possible to have two move -- moving forward that are
 3 approved simultaneously for the same property; is
 4 that accurate?
 5 A. There could be two, but they could only
 6 take action on one. And in the case of this one,
 7 there is documentation from Wilmoor asking at which
 8 time if a decision of approval was granted to Toll
 9 would they -- could they just formally withdraw --
 10 Q. Sure.
 11 A. -- theirs.
 12 Q. And am I correct in assuming what -- if
 13 Toll were to be approved, there would be a condition
 14 of approval or something that says all other -- you
 15 know, in order to move forward, all other site plans
 16 or entitlements must be withdrawn?
 17 A. Yes. But there -- and there's also
 18 documentation that Wilmoor was going to issue a
 19 withdrawal of their approval prior to --
 20 Q. I just meant in --
 21 A. Yeah.
 22 Q. -- a generalized way.
 23 A. Yes.
 24 Q. Okay. You can't have two builders
 25 building on the same exact time.

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1 A. That's correct.
 2 Q. Okay. Thank you. I just want to make
 3 sure that there isn't something unique that I was
 4 unaware of.
 5 THE HEARING EXAMINER: That's all I had.
 6 Anything further for this witness?
 7 MS. ORRICO: No, Mr. Examiner.
 8 THE HEARING EXAMINER: Okay. Next witness
 9 for the City?
 10 Thank you for being here.
 11 MR. HANEY: I'll call Steven Fischer.
 12 THE HEARING EXAMINER: Good morning.
 13 MR. FISCHER: Good morning.
 14 STEVEN FISCHER, called as a witness on behalf of the
 15 City of Redmond, having been first duly sworn, was
 16 examined and testified as follows:
 17 THE HEARING EXAMINER: Thank you.
 18 DIRECT EXAMINATION
 19 BY MR. HANEY:
 20 Q. Mr. Fischer, could you please state your
 21 full name and spell your last name for the record?
 22 A. My name is Steven Fischer. Last name, F-
 23 i-s-c-h-e-r.
 24 Q. And Mr. Fischer, what is your current
 25 position with the City of Redmond?

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1 A. Development review division manager.
 2 Q. Can you tell us what the development
 3 review division manager duties are?
 4 A. There's a staff of 10. I oversee their
 5 work and make their project assignments and answer
 6 questions as needed. I also provide a conduit
 7 between the working -- the staff that I manage,
 8 other divisions, and the director and from the
 9 mayor's office.
 10 Q. Mr. Fischer, can you tell us how long have
 11 you been in the development review manager position?
 12 A. Just over four years.
 13 Q. And prior to that, what other positions
 14 did you hold with the City of Redmond?
 15 A. I have worked for the City of Redmond for
 16 just shy of 21 years. I started as an associate
 17 planner, a senior planner, principal planner at
 18 various stages.
 19 Q. Do you have any other planning experience
 20 you wish to tell us about?
 21 A. Overall, I have 31 years of planning
 22 experience. I've worked in three other cities.
 23 Q. And in what capacity was your work in
 24 those other cities?
 25 A. Everything from an entry-level planner to

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1 a senior planner to interim planning manager.
 2 Q. And do you have any professional
 3 certifications or affiliations as a planner?
 4 A. As a planner, I have a membership to the
 5 Association of Plan -- Washington -- AWA -- American
 6 -- American Planning Association. But other than
 7 that, no.
 8 Q. Thank you. Mr. Fischer, in your capacity
 9 as a development review manager, did you oversee Ms.
 10 Pyle's work and Mr. Sticka's work on the Wilmoor
 11 application and -- and extension request?
 12 A. Yes, I did.
 13 Q. Now, there's been indication here -- Mr.
 14 Fischer, there's been some testimony about the
 15 Wilmoor application being approved in September of
 16 2017. You heard that testimony?
 17 A. Yes.
 18 Q. That's the Wilmoor extension request.
 19 A. Yes.
 20 Q. Mr. Fischer, what is the practice of the
 21 Technical Committee as far as the issuance of its
 22 decisions?
 23 A. Technical Committee meets every Wednesday,
 24 assuming that there is an agenda.
 25 Q. First of all, I -- let me just stop you

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1 for a moment because I'm not sure how familiar the
 2 Hearing Examiner is with the -- the City of
 3 Redmond's Technical Committee. Can you explain to
 4 us what the Technical Committee is?
 5 A. Certainly. Technical Committee is, to the
 6 best of my knowledge, unique to Redmond. It's
 7 certainly not something I have encountered working
 8 in other jurisdictions. The Technical Committee, by
 9 code, is the planning director and the public works
 10 director. The intent of that is projects,
 11 development review projects, City projects are
 12 brought before this committee for review,
 13 discussion, and an approval of some form. It is not
 14 -- it is very common and certainly to today's
 15 practice to have a fire marshal, a building
 16 official, different managers from different groups
 17 there as well as support to the two directors.
 18 A project comes in. It is reviewed. A
 19 presentation is made oftentimes by the individual
 20 planner or a member from public works. It is
 21 discussed and then a decision rendered.
 22 If it is a land use permit, whether it's
 23 an approval, a request for additional information on
 24 a land use application, or if it were to be an
 25 extension to a permit, at that time, there is a --

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1 an official letter, document, that is sent out to
 2 the project applicant that states that the Technical
 3 Committee took up your item on this date, has
 4 reviewed it, and has rendered such a decision --
 5 approval, denial, a request for additional
 6 information.
 7 Something in that order would come back
 8 out if it were to be an approval, oftentimes with
 9 lengthy conditions. Like, if it were -- was a
 10 recommendation for a site plan entitlement, it might
 11 -- would have a lengthy list of conditions to it.
 12 But that would be the City's decision. That would
 13 go out from the Technical Committee.
 14 Q. Are Technical Committee decisions final at
 15 the time that the Technical Committee actually takes
 16 a vote?
 17 A. Pardon? Again.
 18 Q. Are Technical Committee decisions final at
 19 the time the Technical Committee actually meets and
 20 takes a vote?
 21 A. No. The -- the official letter that goes
 22 out would be the document. That would be the final
 23 decision. These letters of decisions would have
 24 signatures from both the planning director and the
 25 public works director. It would be on City

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1 letterhead. And it would state that this is --
 2 would contain language that would discuss, if you
 3 wish to appeal this decision, you must do so within
 4 X number of days and give you the procedures on how
 5 to go about doing that.
 6 Q. And Mr. Fischer, I'm going to hand you at
 7 this point, since I know we don't have -- unless you
 8 have it. Do you have City's exhibits in front of
 9 you, Mr. Fischer?
 10 A. I think I do. I have two binders, and I'm
 11 -- I'm -- I'm -- I'm a bit mystified of exactly what
 12 I have. But if you call out a number, I will
 13 happily check to see if I have it.
 14 Q. If you could look, do you have City's
 15 Exhibit C-2?
 16 MS. ORRICO: Mr. Haney, I have a complete
 17 exhibit book. Would you just like him to use this?
 18 They're labeled and everything.
 19 BY MR. HANEY:
 20 A. Exhibit C-2 is what?
 21 Q. It -- it is the December 8th, 2015, SPE
 22 approval for Wilmoor.
 23 A. No. I have everything. I just -- the
 24 numbering is all off. This is City Exhibit C-2.
 25 MR. HANEY: Thank you, Ms. Orrico.

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1 THE WITNESS: All right. Thank you.
 2 BY MR. HANEY:
 3 A. December 8, 2015, Technical Committee
 4 Notice of Decision.
 5 Q. Is -- is this the type of letter that you
 6 were talking about as the decision of the Technical
 7 Committee?
 8 A. Yes.
 9 Q. And can you tell us -- you were -- you
 10 were describing how these Technical Committee
 11 letters look and the elements of them. Can you --
 12 can you tell us from this letter whether that meets
 13 those kinds of requirements?
 14 A. Yes. This is a typical decision. In this
 15 case, it's an approval letter for a site plan
 16 entitlement. It -- it states that the Technical
 17 Committee has reviewed and approved a particular
 18 project for 24 single -- 24 single-family cottage
 19 homes with attached garages.
 20 It talks about next steps. It talks about
 21 the coordinated civil review process. It talks
 22 about the building permit process. It has a number
 23 of links for additional information. It says if you
 24 have additional questions, here are a bunch of
 25 people that -- from various groups within the City

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1 of how you can get a hold of them either by phone or
 2 by email. And it gives you additional -- it gives
 3 you information on the City planner and how to
 4 contact that individual if you have questions,
 5 followed by the planning director and public works
 6 director's signature.
 7 Q. And again, the planning director and the
 8 public works director are the Technical Committee,
 9 per the code, correct?
 10 A. That is correct.
 11 Q. Are these -- are these letters sometimes
 12 issued in draft form to an applicant after the
 13 Technical Committee has taken a vote?
 14 A. As you might imagine, applicants when they
 15 go before the Technical Committee are always anxious
 16 to know how did it go, what happened, what's the
 17 state of my project. Frequently, planners receive
 18 phone calls or emails requesting what happened.
 19 There are occasions, specifically on large projects,
 20 where the planner may share a draft letter with an
 21 applicant saying this is what's being drafted; it's
 22 in review right now. It gets to be reviewed by
 23 myself as a manager, the engineering division's
 24 planning manager, the public works director, and the
 25 planning director before it officially goes out.

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1 So there are -- there are occasions when a
 2 draft letter will be sent out more as a courtesy to
 3 let them know this is what is coming but it's in
 4 draft form.
 5 Q. Now, I'd like to ask you to turn to City's
 6 Exhibit C-10, if you would.
 7 A. Yes.
 8 Q. This, I believe, was testified to as an
 9 email that Mr. Sticka sent out on September 21. I
 10 believe this document is not only City's Exhibit C-
 11 10, but it is Appellant's Exhibit A-4, just for
 12 cross-referencing purposes.
 13 The -- up at the top of the page, there is
 14 a -- an email from Mr. Sticka to Greg, which I
 15 assume means Greg Wilson. It -- is that the kind of
 16 transmittal of a draft letter that you might
 17 ordinarily see?
 18 A. What I see here is just the email
 19 transmittal. It's simply saying that I've -- here's
 20 a draft of your approval from the Technical
 21 Committee. Once both directors have reviewed and
 22 signed the letter, you'll receive a copy of what I
 23 would assume is the -- the formal letter, the
 24 official letter.
 25 Q. Now, it -- the -- this says once both

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1 directors have reviewed. Does that mean that the
 2 directors have yet to actually review the letter and
 3 determine whether or not the letter is their
 4 decision?
 5 A. That's correct.
 6 Q. And then they sign the letter; is that
 7 correct?
 8 A. Assuming that -- it is not uncommon for
 9 the two managers and the two directors to make
 10 modifications. Once those are corrected, then the
 11 letter is signed, and then it is sent out, yes.
 12 Q. And is that the point at which you
 13 consider it a final decision of the Technical
 14 Committee?
 15 A. Definitely.
 16 Q. And prior to that, there can be changes
 17 made in the draft letter.
 18 A. Definitely, yes.
 19 Q. I'd like to ask you to turn then to
 20 Exhibit C-11. Now, the previous email that was
 21 Exhibit C-10 was dated September 21st. And I
 22 understand the Technical Committee actually met
 23 September 20th; is that correct?
 24 A. Correct.
 25 Q. You sent out this email -- well, first of

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1 all, let me -- let me ask you. Is this an email you
 2 sent out on September 22nd?
 3 A. It is.
 4 Q. And who was that email sent to?
 5 A. That is sent out to Ms. Chan.
 6 Q. And who is Ms. Chan?
 7 A. Ms. -- Ms. Laura Chan is a neighbor who
 8 lives in the close proximity to the project site.
 9 Q. Okay. And does this letter talk about
 10 your understanding about when the technical decision
 11 -- Technical Committee decision becomes final?
 12 A. Yes.
 13 Q. And I'll direct you to the last -- I guess
 14 it's the last sentence of -- well, perhaps you could
 15 summarize for me --
 16 A. Well --
 17 Q. -- the second paragraph.
 18 A. I think what you're getting at is the
 19 second paragraph here. And the last sentence here
 20 is saying that the official approve letter is not
 21 expected to be mailed out until next week, and we
 22 can make certain that you receive a copy. Ms. Chan
 23 had requested information about what had happened
 24 earlier in the week with the Technical Committee.
 25 And she was requesting information about

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1 what had taken place, what -- what is taking place
 2 with actions that were taking place that week. And
 3 so I responded to her request and said that the
 4 official letter is not expected to be taken -- not -
 5 - not to be -- not to be mailed out until later in
 6 the -- next week.
 7 Q. Now, this second paragraph says that the
 8 Technical Committee's initial decision on September
 9 20th was based on change of ownership. Do you see
 10 that?
 11 A. Let's see.
 12 Q. I think if you look, it's right -- it's
 13 the sentence --
 14 A. Yes.
 15 Q. -- immediately prior to --
 16 A. Yes.
 17 Q. -- to that sentence. Did you hear Mr.
 18 Wilson testify today that the applicant was not
 19 requesting its extension based on change of
 20 ownership?
 21 A. I did.
 22 Q. And did you -- do you understand from Mr.
 23 Wilson that ownership has not changed now?
 24 A. I do understand that, yes.
 25 Q. So this Technical Committee decision, if

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1 it was made on that basis, was have been in error,
 2 correct?
 3 A. That is correct.
 4 Q. Does the -- does -- was it your
 5 understanding that the Technical Committee approved
 6 it based on any other basis in September?
 7 A. I have no recollection of any other basis
 8 it being decided upon.
 9 Q. Okay. Now, the next paragraph in this
 10 email says -- has a first sentence that says the
 11 action that can be appealed is the Technical
 12 Committee decision that is contained in the approval
 13 letter. What -- what did you mean by that?
 14 A. That an action by the City can be
 15 appealed, but there is nothing to appeal until the
 16 approval letter is actually mailed out.
 17 Q. And is that because you consider the
 18 approval letter -- that final approval letter that's
 19 mailed out to be the final decision?
 20 A. The -- a final approval letter is the one
 21 that contains the signatures of both directors on
 22 City letterhead.
 23 Q. And again, I'll ask you to turn to City's
 24 Exhibit C-4.
 25 A. Okay.

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1 Q. This is the -- a letter dated December
 2 8th, 2017; is that correct?
 3 A. December 8th, 2017, yes.
 4 Q. Is that the letter that ultimately denied
 5 the Wilmoor request for extension?
 6 A. Yes.
 7 Q. And did you play a part in the drafting of
 8 this letter at all?
 9 A. What I did is I reviewed the letter after
 10 it had been drafted by Mr. Sticka.
 11 Q. And this letter is -- has the signatures
 12 of both the planning director and the public works
 13 director?
 14 A. That is correct.
 15 Q. This is a final decision.
 16 A. This is City's final decision.
 17 Q. Did the City ever issue a final decision
 18 on the -- on the extension request other than this
 19 letter?
 20 A. There was no official decision from the
 21 City on anything prior to the December 8th, 2017,
 22 letter.
 23 Q. So when Mr. Wilson testified about having
 24 received an approval from the City, was there ever a
 25 decision that was sent out in a letter under the

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1 signatures of the directors that granted an
 2 approval?
 3 A. Other -- there were -- there was no
 4 decision other than the December 8 letter. There
 5 was no official letter with signatures from
 6 directors prior to this on the issue of an extension
 7 to this project.
 8 Q. Now, I think you said that you -- you were
 9 involved with the Technical Committee. What -- what
 10 function do you perform as far as the Technical
 11 Committee is concerned?
 12 A. I help organize the agenda when people
 13 have items to come onto the agenda. I help manage
 14 that. I take notes, I prepare minutes, and I am
 15 involved in the discussion during the Technical
 16 Committee.
 17 Q. Okay. And do you -- excuse me just a
 18 second.
 19 Are the Technical Committee meetings open
 20 to the public?
 21 A. Technical Committee meetings -- Technical
 22 Committee meetings are not open to the public. It's
 23 an internal committee.
 24 Q. Okay. So there's no -- nobody from the
 25 public who attends. Developers aren't allowed to

90	<p>1 attend. It's just the members of the Technical 2 Committee who are -- 3 A. That is correct. 4 MR. HANEY: I don't have any further 5 questions for Mr. Fischer. 6 CROSS-EXAMINATION 7 BY MS. ORRICO: 8 Q. Good morning, good afternoon, whatever it 9 is. First, I want to clarify something. Mr. Haney 10 said that Exhibit C-10 and Exhibit A-4 are the same. 11 Now -- 12 MR. HANEY: Ms. Orrico, I -- I realize 13 that C -- excuse me -- Exhibit C-10 does not include 14 the draft letter. I apologize for that -- 15 MS. ORRICO: Right. And I -- this was 16 just -- I was not -- 17 MR. HANEY: Sure. 18 MS. ORRICO: -- trying to -- I -- I just - 19 - it was for Examiner's clarification. 20 THE HEARING EXAMINER: And I realized it 21 as well. So -- 22 MS. ORRICO: Okay. 23 THE HEARING EXAMINER: -- I have no 24 problem -- 25 MS. ORRICO: Thank you.</p>	92
91	<p>1 MR. HANEY: I noticed it after -- after we 2 finished with it and did not go back. I apologize. 3 MS. ORRICO: Okay. 4 BY MS. ORRICO: 5 Q. So you testified that you are familiar 6 with the Technical Committee process and you 7 actually prepare the minutes. 8 A. That's correct. 9 Q. So could you please turn to Appellant's 10 Exhibit A-6, page 6 -- well, Exhibit A-6. 11 A. Okay. I am there. 12 Q. And can you identify that document, 13 please? 14 A. This is a Technical Committee meeting 15 minutes, September 20, 2017. 16 Q. And did you prepare these minutes? 17 A. I did. 18 Q. And could you please turn to page 6? And 19 could you please read the last sentence on page 6 -- 20 or excuse me. Page 6 deals with the Wilmoor 21 extension request; is that correct? 22 A. That is correct. 23 Q. Could you please read the last sentence? 24 A. "The Technical Committee approved a one- 25 year extension request."</p>	93

<p style="text-align: right;">94</p> <p>1 Q. And are you familiar with this email?</p> <p>2 A. I was copied on it, so yes, but I haven't</p> <p>3 seen it since probably September.</p> <p>4 Q. So this email to Mr. Schnell, Mr. Sticka</p> <p>5 is responding to Mr. Schnell's questions, which</p> <p>6 appear to be the first line and then followed with</p> <p>7 Mr. Sticka's response?</p> <p>8 A. Mm-hmm. Yes.</p> <p>9 Q. So could you please read the question</p> <p>10 raised by Mr. Schnell in number 1 and Mr. Sticka's</p> <p>11 answer?</p> <p>12 A. "What is the status of the extension?"</p> <p>13 "The City of Redmond Technical Committee</p> <p>14 approved the extension request for Rosehill Cottages</p> <p>15 site plan entitlement, LAND-2013-01720, at their</p> <p>16 meeting on September 20, 2017."</p> <p>17 Q. And could you please the question and the</p> <p>18 answer in 5(a)?</p> <p>19 A. Number 5 -- assuming --</p> <p>20 Q. A.</p> <p>21 A. Oh, 5(a). "What date was the extension</p> <p>22 approved?"</p> <p>23 "The extension request was approved by the</p> <p>24 Technical Committee on September 20, 2017."</p> <p>25 MS. ORRICO: Thank you. I have no more</p>	<p style="text-align: right;">96</p> <p>1 promulgated or</p> <p>2 A. Rules have been produced -- have been</p> <p>3 created. As you might imagine, it's something I</p> <p>4 don't read very often.</p> <p>5 Q. Sure.</p> <p>6 A. But if you would like, we can certainly</p> <p>7 provide a copy of the rules for you. But I couldn't</p> <p>8 speak to them specifically.</p> <p>9 Q. And final point of clarification from my</p> <p>10 understanding, if I understand, in many</p> <p>11 jurisdictions, this would be called a staff meeting</p> <p>12 or something. It's -- it's a nonpublic group. But</p> <p>13 then there's a vote -- you mentioned voting. Is the</p> <p>14 -- and -- but there's two people that vote even</p> <p>15 though there may be nine people in the room. Or is</p> <p>16 it that -- I -- I got a little confused --</p> <p>17 A. Yeah.</p> <p>18 Q. -- at that point.</p> <p>19 A. No problem at all. So the Technical</p> <p>20 Committee by code is comprised of two individuals,</p> <p>21 the planning director and the public works director.</p> <p>22 Anyone else in the room is there --</p> <p>23 Q. As --</p> <p>24 A. -- at their request to --</p> <p>25 Q. -- support capacity.</p>
<p style="text-align: right;">95</p> <p>1 questions.</p> <p>2 EXAMINATION</p> <p>3 BY THE HEARING EXAMINER:</p> <p>4 Q. I guess my only question at this point</p> <p>5 was, in your testimony, Mr. Fischer, you had</p> <p>6 referenced the fact that these draft letters</p> <p>7 sometimes go out with the understanding that there</p> <p>8 may be changes. Are you aware of a situation that's</p> <p>9 occurred where the actual decision wholly changes as</p> <p>10 opposed to minor language in the decision? Is this</p> <p>11 common?</p> <p>12 A. I'm aware of more than just minor</p> <p>13 wordsmithing. I am aware of conditions being</p> <p>14 rewritten, conditions being struck, sometimes</p> <p>15 significantly. I am not aware, or nor do I recall,</p> <p>16 of a decision totally flipping it, I think is your</p> <p>17 question.</p> <p>18 Q. Great. Thank you. My only other question</p> <p>19 was I -- the -- your own code references their rules</p> <p>20 that -- that are kept on file for the Technical</p> <p>21 Committee. I believe that's 450.040 of -- of the</p> <p>22 Redmond code references rules for the Technical</p> <p>23 Committee. I -- I didn't find those rules. But do</p> <p>24 you know -- does -- do the rules address any of</p> <p>25 these issues, or have such rules actually been</p>	<p style="text-align: right;">97</p> <p>1 A. -- just as support capacity to provide</p> <p>2 information maybe to offer an opinion. But the</p> <p>3 decision is those two individuals. If there's a</p> <p>4 vote, it is those two individuals who are voting.</p> <p>5 Q. Okay. And they do that at the meeting.</p> <p>6 A. Yes.</p> <p>7 THE HEARING EXAMINER: Okay. Great.</p> <p>8 Thank you.</p> <p>9 I don't know if that caused anyone to have</p> <p>10 further questions for Mr. Fischer.</p> <p>11 MR. HANEY: I do have a little bit of</p> <p>12 redirect --</p> <p>13 THE HEARING EXAMINER: Sure.</p> <p>14 MR. HANEY: -- just based on Ms. Orrico's</p> <p>15 questions.</p> <p>16 REDIRECT EXAMINATION</p> <p>17 BY MR. HANEY:</p> <p>18 Q. Mr. Fischer, Ms. Orrico asked you to look</p> <p>19 at Exhibit A-6, so I would like you to look at that</p> <p>20 exhibit again.</p> <p>21 A. Exhibit A-6, yes.</p> <p>22 Q. Now, Exhibit A-6 is the Technical</p> <p>23 Committee agenda and minutes, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And again, you were directed to page 6 of</p>

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1 those, and it says the Technical Committee approved
 2 a one-year extension request for the Rosehill
 3 Cottages. You recall that?
 4 A. That is correct.
 5 Q. Again, is that the final decision of the
 6 Technical Committee, or does -- is there something
 7 else which is the final decision?
 8 A. This is the meeting minutes for the
 9 meeting of September 20th. This is only a record of
 10 what took place at that meeting. This document is
 11 not the official approval for the -- for the action,
 12 and nor would it be for any of the other items on
 13 this agenda.
 14 Q. Let me direct you then to Exhibit A-9,
 15 which Ms. Orrico -- excuse me -- let me start with
 16 Exhibit A-8, which Ms. Orrico asked you about.
 17 A. Okay.
 18 Q. And she directed you, I believe to
 19 paragraph 2. I'd like to direct you to paragraph 5.
 20 Paragraph 5 talks about appealing the decisions.
 21 And can you -- can you read the first sentence
 22 there?
 23 A. In item number 5, if you would like to
 24 appeal a decision, the information is as follows:
 25 To file an appeal, please complete the form in the

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1 A. That is correct.
 2 Q. And again, turning to paragraph 5(c), can
 3 you read the second sentence that begins, "To file
 4 an appeal"?
 5 A. "To file an appeal, please complete the
 6 form in the attached hyperlink and pay the
 7 applicable \$500 fee by 5:00 p.m. on the last day of
 8 the appeal period, which will be outlined in a
 9 letter."
 10 Q. Again, the letter being the final decision
 11 of the Technical Committee?
 12 A. That is correct.
 13 MR. HANEY: No further questions for Mr.
 14 Fischer.
 15 FURTHER EXAMINATION
 16 BY THE HEARING EXAMINER:
 17 Q. One final question, Mr. Fischer. From my
 18 understanding, the minutes which have been admitted
 19 as Exhibit A-6, are these something that are made
 20 publicly available? Are they posted somewhere? Or
 21 is this just an internal document kept by the City?
 22 I'm just kind of trying to determine what this
 23 document entails. I understand what minutes are,
 24 but --
 25 A. Yep.

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1 attached -- attached hyperlink and pay the
 2 applicable \$500 fee by 5:00 p.m. on the last day of
 3 the appeal period, which will be outlined in the
 4 letter.
 5 Q. Is that consistent with your
 6 understanding, Mr. Fischer, that the final decision
 7 is the letter when it ultimately gets issued?
 8 A. Yes.
 9 Q. And that's when the appeal period starts?
 10 A. That is correct.
 11 Q. And Ms. Orrico asked you about Exhibit A-
 12 9, and she asked you about, I believe, both
 13 paragraphs 3 and 5(a). I'd like to ask you about
 14 paragraph 5(b). This is, again, an email from Mr.
 15 Sticka, whom you supervise. 5(b) -- can you read
 16 that for us?
 17 A. 5(b), "Has the letter of decision been
 18 mailed, and, if so, on what date was it mailed or
 19 what date is expected to be mailed?"
 20 Response is, "No, the decision has not yet
 21 been mailed. However, staff expects to mail it
 22 sometime next week."
 23 Q. Does that mean that the final decision had
 24 not yet been issued and signed by the directors at
 25 this time?

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1 Q. -- you know.
 2 A. This is an internal, as you, I think --
 3 believe you mentioned. It's, like, similar to an
 4 internal staff meeting. So these minutes are
 5 distributed to other -- throughout the -- to -- to a
 6 number of individuals who work on land use permits
 7 or City projects that might be interested in what's
 8 taking place. I'm not aware of it going beyond just
 9 internal to the City.
 10 Q. Sure. Like, they don't go to the -- the
 11 applicant, for instance.
 12 A. They don't go to the applicants.
 13 Q. Okay.
 14 A. The -- they aren't posted at the library.
 15 Q. That was my --
 16 A. It's not a --
 17 Q. -- question.
 18 A. -- public document.
 19 THE HEARING EXAMINER: Okay. Thank you.
 20 Anything further for this witness?
 21 MR. HANEY: No, I have nothing further.
 22 MS. ORRICO: Nothing further.
 23 THE HEARING EXAMINER: Great. Thank you.
 24 Thank you for being here.
 25 MR. HANEY: Thank you for the book.

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1 MS. ORRICO: Sure.
 2 MR. HANEY: I will call Karen Anderson.
 3 THE HEARING EXAMINER: And do we have a
 4 sense of how many more witnesses --
 5 MR. HANEY: I think Ms. Anderson --
 6 THE HEARING EXAMINER: -- Mr. Haney?
 7 MR. HANEY: -- will probably be our last
 8 witness.
 9 THE HEARING EXAMINER: Okay.
 10 MR. HANEY: Is it okay if Ms. Anderson --
 11 MS. ANDERSON: I stay here?
 12 MR. HANEY: Can you see --
 13 THE HEARING EXAMINER: I can see you fine
 14 from there.
 15 MR. HANEY: -- would you --
 16 THE HEARING EXAMINER: That's great.
 17 KAREN LYNN ANDERSON, called as a witness on behalf
 18 of the City of Redmond, having been first duly
 19 sworn, was examined and testified as follows:
 20 THE HEARING EXAMINER: Great. Thank you.
 21 DIRECT EXAMINATION
 22 BY MR. HANEY:
 23 Q. Ms. Anderson, can you please state your
 24 full name and spell your last name for the record?
 25 A. Yes. My full name is Karen Lynn Anderson,

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1 spelled A-n-d-e-r-s-o-n. It was formerly Haluza, H-
 2 a-l-u-z-a.
 3 Q. Ms. Anderson, can you tell us what
 4 position you currently hold with the City of
 5 Redmond?
 6 A. I'm the director of planning and community
 7 development.
 8 Q. And what do the duties of the planning and
 9 community development director entail?
 10 A. I oversee the activities of the Planning
 11 and Community Development Department, which includes
 12 planning, building, code enforcement, human
 13 services, housing, current planning, and long-range
 14 planning.
 15 Q. Do you yourself get involved in the review
 16 of projects -- individual development projects?
 17 A. Yes.
 18 Q. And -- and at what point do you get
 19 reviewed -- involved in that?
 20 A. Generally, not until they are coming
 21 before either the Technical Committee or would be
 22 prepared for review by the planning commission or
 23 City Council or some other reviewing body. I also
 24 do receive a report weekly about all new
 25 applications that have been submitted to the City,

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1 and I sometimes at that time ask for additional
 2 information about any of those applications.
 3 Q. Ms. Anderson, you are a member of the
 4 Technical Committee, correct?
 5 A. Yes.
 6 Q. And -- and can you describe what your role
 7 is as a member of the Technical Committee?
 8 A. Certainly. The Technical Committee, as
 9 you know, is comprised of two members, the public
 10 works director and the planning and community
 11 development director. So my role there is to, each
 12 week, hear the applications that are brought before
 13 the Technical Committee, consider the information
 14 that's presented by staff, and then render a
 15 decision along with the public works director.
 16 Q. And Ms. Anderson, can you just tell us in
 17 -- in terms of your participation on the Technical
 18 Committee, how does the Technical Committee
 19 generally operate? Does it operate by consensus?
 20 Is it a voting body? How does it generally operate?
 21 A. It -- it -- I -- I wouldn't characterize
 22 it as a voting body so much as a -- as a consensus
 23 decision-making process, based on the information
 24 that is provided by staff. The intention of this
 25 body is that it's -- it's really a formalized way to

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1 make ministerial decisions. So the applications
 2 that are brought before the Technical Committee are
 3 within the purview of staff to make. And therefore,
 4 this is really a consensus process where we review
 5 the decision criteria, the evidence that supports
 6 the decision criteria, and then render that
 7 decision.
 8 Q. And as far as the Technical Committee's
 9 decisions are concerned, do you agree with the
 10 testimony that was given by Mr. Fischer about when a
 11 Technical Committee decision becomes a final
 12 decision?
 13 A. Yes.
 14 Q. Is there anything you'd like to add to Mr.
 15 Fischer's testimony in that regard?
 16 A. In that regard? No.
 17 Q. Okay. Now, the testimony here today is
 18 that the Technical Committee met on September 20,
 19 2017, to consider this extension request. You
 20 recall that?
 21 A. Yes.
 22 Q. And were you present to the Technical
 23 Committee at that time?
 24 A. Yes.
 25 Q. Can you tell us what happened at the

<p style="text-align: right;">106</p> <p>1 Technical Committee that day? 2 A. Certainly. Staff presented information -- 3 the case planner, Ben Sticka -- regarding the 4 request to have an extension of the previously 5 approved site plan entitlement. And we discussed 6 the four decision criteria that apply to request for 7 such extensions. And during that discussion, it 8 became clear that there wasn't any substantial 9 movement toward any physical improvements on the 10 site. 11 And so although the applicant had 12 requested the justification for the extension not 13 based on change of ownership, there wasn't any 14 information that had been presented that would have 15 supported any of the other decision criteria. The 16 only information that was provided that could have 17 supported an extension was that the applicant was in 18 the process of selling the property. 19 So I asked for information that could be 20 shown to substantiate change of ownership because 21 that was the only -- of the decision criteria 22 available, that was the only one where it appeared 23 that there might be some evidence to support it. 24 So it's not uncommon for us when we 25 request this additional information to not continue</p>	<p style="text-align: right;">108</p> <p>1 And so our deliberation and decision- 2 making was only based on evidence that was provided 3 to support an extension based on those four criteria 4 since no physical improvements had commenced on the 5 site, nor had there been an application for any 6 physical improvements to commence on the site. In 7 fact, the information that the property was being 8 sold but had not yet been sold was an indicator to 9 me that the property owner or the applicant was -- 10 for Wilmoor project was not proposing to continue 11 forward with that application. 12 So economic hardship, change of ownership, 13 unanticipated construction and/or site design 14 problems, and other circumstances beyond the control 15 of the applicant were the four criteria. And again, 16 except for change of ownership, which we then asked 17 for evidence of, we couldn't find any substantiation 18 of those other three criteria. And following that, 19 we were not given any substantiation of actual 20 change of ownership. 21 Q. So let me keep with the September 20th 22 meeting. The minutes of the Technical Committee 23 meeting, which were admitted into the record, say 24 that the extension request was approved, and it 25 doesn't talk about this additional information. Can</p>
<p style="text-align: right;">107</p> <p>1 the item, but to go ahead and ask that that 2 information then be reflected in the letter, which 3 constitutes the final approval. So that was the -- 4 the tenor of the discussion that was at the meeting. 5 Q. And you mentioned that the other criteria 6 were discussed. And by that, I presume you mean the 7 criteria that have been presented in the appeal here 8 -- the -- the unique or unusual circumstances, the - 9 - or unreasonable delays in the project, and the -- 10 excuse me -- the other circumstances beyond the 11 control of the applicant. 12 Those were discussed on the September 20th 13 Technical Committee meeting? 14 A. Yes. The -- the approval of the -- of the 15 site plan entitlement would have expired, as you 16 know, within two years unless there had been 17 physical -- commencement of physical improvements on 18 the site. None of that had occurred. So that 19 leaves us with the evaluation of the four decision 20 criteria, and that's what we based our decision on, 21 so specific to the Wilmoor project not associated 22 with the proposed Toll Brothers project. So I 23 thought it was very important that the two -- that 24 those two applications not be comingled or confused 25 with each other.</p>	<p style="text-align: right;">109</p> <p>1 you explain that? 2 A. I would characterize the minutes of the 3 Technical Committee, really, as basic action 4 minutes. So the fact that it doesn't capture the 5 full range of what was discussed, I think, shows 6 that they're meant to be more of simple action 7 minutes. 8 Q. Okay. Did you -- do you know subsequently 9 -- subsequent to the Technical Committee meeting on 10 September 20th, was additional information sought 11 from the applicant relating to change of ownership? 12 A. Yes. 13 Q. And did you receive some information from 14 the applicant regarding change of ownership? 15 A. I believe that there is a letter from the 16 applicant. 17 Q. I'll ask you to look at -- at Appellant's 18 Exhibit A-15. Is that the letter you received? 19 A. That letter -- I have reviewed it. It was 20 not addressed to me, but it is the letter that was 21 received by the City. 22 Q. Was there any other information provided 23 beyond what is in this letter? 24 A. Not to my knowledge. 25 Q. Now, there is also an indication that the</p>

<p style="text-align: right;">110</p> <p>1 Technical Committee at some point -- or someone 2 decided at some point that this application needed 3 additional notice. Can you explain that? 4 A. Yes. The application is a Type II 5 application. And following the September 20th 6 meeting, we were contacted by adjacent property 7 owners, Laura Chan and Barry Schnell. They 8 questioned the -- the appropriateness of the 9 noticing that had been done. And so in reviewing 10 our code and the requirement for noticing processes 11 for Type II applications, I directed the case 12 planner, Ben Sticka, to correct the record and 13 provide the appropriate notice. 14 Q. Now, can you explain to the Hearing 15 Examiner what the -- what a Type II application is 16 and how the City's applications are classified by 17 type? 18 A. The City has -- I -- I believe it's five 19 total types -- Type I through Type V applications. 20 Each one of them has a process flow chart, and 21 that's contained in the zoning ordinance and the 22 City code. And each one has a different way of 23 moving through that process -- different noticing 24 requirements, hearing bodies, and appeal processes. 25 Q. Now, there is an application called a Type</p>	<p style="text-align: right;">112</p> <p>1 a Type II application. Type II application requires 2 a Notice of Application to be filed. 3 Q. Okay. I think we've covered this in the 4 brief. So I'll -- I'll leave it to the brief for 5 the -- the law on this. 6 Ms. Anderson, was the notice ultimately 7 given, the 21 -- or excuse me -- the notice for the 8 application? 9 A. Yes. 10 Q. And did you consider not giving that 11 notice and treating this as some other type of 12 application? 13 A. No. 14 Q. So once the notice was given, did the 15 Technical Committee meet again? 16 A. Yes. 17 Q. And at that point, did the Technical 18 Committee have Exhibit A-15, the letter from 19 Marymoor Realty relating to the contract to purchase 20 the property in front of it? 21 A. Yes. 22 Q. Did you -- when did the Technical 23 Committee meet again, if you recall? 24 A. That -- I believe that that was December 25 8th, 2017.</p>
<p style="text-align: right;">111</p> <p>1 I permit application; is that correct? 2 A. Yes. 3 Q. And who is the decision maker on that? 4 A. I don't have that code section in front of 5 me. It's always my preference to be able to look at 6 the code section each time I am presented with an 7 application. I do on a case-by-case basis review it 8 to make sure that we're following the appropriate 9 procedure. I could look that up. I'd be happy to 10 do it. 11 Q. Well, do you recall whether that decision 12 maker is the Technical Committee? 13 A. Again, I prefer to reference the code when 14 I'm being asked to have these very specific pieces 15 of information. 16 Q. Okay. Well, let me ask you -- regarding 17 the type, why did you determine that this 18 application was a Type II application and required 19 notice? 20 A. It falls under that in the code. 21 Q. And why is that? 22 A. Because it's a request for extension. 23 Q. Is -- is it because the Technical 24 Committee is the decision maker on the request? 25 A. It is because it is a Type II permit -- or</p>	<p style="text-align: right;">113</p> <p>1 Q. Well, I'll -- I'll ask you -- let's see if 2 we can turn to it. Would it not have been December 3 6th -- or excuse me -- it was December 8th, you say. 4 Is that -- is that the date you -- you believe they 5 -- they met again, or was it December 6th? 6 Let's ask -- I'll ask you to turn to -- 7 I'll -- I'll put an exhibit in front of you that -- 8 A. Great. Thank you. 9 Q. -- will answer the question. I'm sorry. 10 A. That would be helpful. 11 Q. I'm sorry. 12 MS. ORRICO: Do you want the notebook? 13 BY MR. HANEY: 14 Q. Exhibit C-13. 15 A. December 6th -- 16 Q. These are the Technical Committee agenda 17 and minutes from December 6th. Can you look at that 18 and tell me if that indicates that the Technical 19 Committee met on December 6th regarding this? 20 A. Yes, it does. 21 Q. And what was the Technical Committee's 22 consideration at that time of the Wilmoor extension 23 request? 24 A. It would have been regarding the change of 25 ownership.</p>

<p style="text-align: right;">114</p> <p>1 Q. Did you discuss the other criteria at all? 2 A. We didn't discuss those criteria again. 3 Q. Is that because you had already discussed 4 them at the September 20th meeting and decided they 5 weren't met? 6 A. Yes. And no additional information had 7 been provided regarding those things. 8 Q. In fact, did the applicant for the 9 extension, Mr. Wilson, ever provide you any 10 information in support of any criteria other than 11 the change of ownership? 12 A. Not to my knowledge. 13 Q. And what was the Technical Committee's 14 decision on December 6th? 15 A. It was to deny the extension. 16 Q. And why was that? 17 A. Because there hadn't been sufficient 18 evidence that change of ownership had occurred. 19 Q. Now, we -- we had some testimony about the 20 code criteria for extensions, and I'd like to just 21 put that in front of you. It's 21.76.090, Sub C, I 22 believe. 23 A. Mm-hmm. 24 Q. And are you looking at that on your -- 25 online right at the moment?</p>	<p style="text-align: right;">116</p> <p>1 additional party. And although the property was 2 under contract, we didn't believe that the 3 constituted enough of a evidence of change of 4 ownership. It seemed like that -- that criteria of 5 the four was the one that had the brightest line and 6 that we weren't able to determine that actual change 7 of ownership had occurred. 8 Q. And you heard the testimony of Mr. Wilson 9 earlier today? 10 A. Yes. 11 Q. And I'm not trying to put words in Mr. 12 Wilson's mouth, but did he agree with you that that 13 hadn't been met? 14 A. He -- as I heard him say today, he said 15 that the change of ownership had not occurred. 16 Q. Okay. And with respect to Criteria C -- 17 excuse me -- Criteria -- yes, Criteria C, 18 unanticipated construction and/or site design 19 problems, was any evidence presented to you of that? 20 A. No. There was never any -- any movement 21 to do anything that would have constituted beginning 22 of construction or site improvements. Had that been 23 the case, then we could have considered that. But 24 there were never any civil plans that were 25 submitted, requests for building permits, or any</p>
<p style="text-align: right;">115</p> <p>1 A. I am. I'm looking at the Redmond Zoning 2 Code. 3 Q. Okay. Can you tell me why you believe 4 that the extension does not meet the criteria for 5 approval? 6 A. Specifically for a change of ownership? 7 Q. For any of the criteria. Specifically, 8 let -- let me start with Criteria number -- the 9 change of ownership criteria. 10 A. Okay. 11 THE HEARING EXAMINER: And Mr. Haney, is 12 this not covered in the decision letter? 13 MR. HANEY: I believe the decision letter 14 just says that the -- none of the criteria are met. 15 I'm not sure that it elaborates beyond that. 16 THE HEARING EXAMINER: Okay. 17 MR. HANEY: So -- 18 THE HEARING EXAMINER: I'm just trying to 19 ensure we have time for legal argument at -- today. 20 MR. HANEY: Sure. 21 THE HEARING EXAMINER: Okay. 22 BY MR. HANEY: 23 A. So for change of ownership, we have needed 24 to see evidence that the property ownership had been 25 transferred from Mr. Kjell Olsson to the -- to an</p>	<p style="text-align: right;">117</p> <p>1 other physical improvements made on the site. 2 Q. Now, let me ask you -- the argument, as I 3 understand it, from Wilmoor today is that Toll 4 Brothers encountered some unanticipated delays or an 5 -- unanticipated problems with site design. Do you 6 agree with that? 7 A. No. 8 Q. What about the final criteria, Criteria D, 9 other circumstances beyond the control of the 10 applicant? Were any such circumstances provided to 11 you from Mr. Wilson in the extension request? 12 A. No. No -- no additional were provided. 13 Q. And are you aware of any anticipated -- or 14 any such circumstances? 15 A. Not to do with the Wilmoor application. 16 MR. HANEY: I have no further questions 17 for Ms. -- 18 BY MR. HANEY: 19 Q Well, I do have one -- one additional 20 question, Ms. Anderson. It's one that I ask a lot 21 of witnesses. I'll -- I'll ask you. Is there 22 anything I haven't covered during your testimony 23 that you would like to say to the Hearing Examiner 24 before he makes his ruling? 25 A. No, nothing additional.</p>

118	<p>1 MR. HANEY: Thank you. I have nothing. 2 THE HEARING EXAMINER: Cross? 3 MS. ORRICO: I have one question. 4 THE HEARING EXAMINER: Sure. 5 CROSS-EXAMINATION 6 BY MS. ORRICO: 7 Q. Could you please turn to Exhibit A-21? 8 MR. HANEY: This is Exhibit A-21, Ms. 9 Orrico? 10 MS. ORRICO: Exhibit A-21. Thank you. 11 Sorry. 12 BY MS. ORRICO: 13 Q. And are you cc'd on this email? 14 A. Yes. 15 Q. And who's this email from? 16 A. Ben Sticka. 17 Q. And is he your subordinate? 18 A. He's not my direct report. He is a 19 subordinate in that I'm the director and he's at a - 20 - at a subordinate position within the Department. 21 But I don't directly supervise him. 22 Q. But ultimately, you're his boss. 23 A. (No audible response). 24 Q. Could you answer the question, please? 25 A. Yes.</p>	120
119	<p>1 Q. Could you please read the first line from 2 this -- the first sentence from this email? 3 A. Yes. It says, "I heard back from the City 4 attorney, who indicated that the extension would be 5 classified as a Type I permit under RZC 6 21.76.050.D." 7 MS. ORRICO: Thank you. I have no further 8 questions. 9 MR. HANEY: May I ask a redirect, just a 10 brief -- 11 THE HEARING EXAMINER: Yes. 12 MR. HANEY: -- question? 13 THE HEARING EXAMINER: Go ahead. I -- 14 MR. HANEY: Can -- 15 THE HEARING EXAMINER: From a legal 16 standpoint, I don't know what difference it would 17 make. But maybe I'm -- 18 REDIRECT EXAMINATION 19 BY MR. HANEY: 20 Q. Can you explain why -- was that 21 determination later changed? 22 A. Yes. 23 Q. And why was that? 24 A. Upon further review, we realized that -- 25 and -- and also with our City attorney's help in</p>	121

122	<p>1 THE HEARING EXAMINER: Great. Anything 2 further? 3 MS. ORRICO: No. 4 THE HEARING EXAMINER: Okay. So we have a 5 little bit of time in advance of the hearing that 6 begins at 1:00. Would you like a brief break before 7 we come back to do legal arguments? Does anyone 8 want to make closing arguments? 9 I certainly had questions for the 10 attorneys from -- just -- just to get their sort of 11 legal concepts squared away. How would you like to 12 proceed, I guess? 13 MS. ORRICO: I do not need a break. I 14 need probably less than 10 minutes for a closing, 15 and I'm happy to answer any questions you have. 16 Would you like to do that before we do our closing? 17 THE HEARING EXAMINER: Yeah. Mr. Haney, 18 does that make sense? 19 MR. HANEY: I -- I am fine with that. 20 THE HEARING EXAMINER: And were you 21 planning on a closing today as well? 22 MR. HANEY: Certainly can. 23 THE HEARING EXAMINER: Okay. Why don't we 24 take just a, I don't know, five-minute bathroom 25 break. You can let folks do what they need to, and</p>	124	<p>1 Examiner were to determine that the September 20th 2 approval was not validly issued, the City's denial 3 was improper. 4 The City did issue a valid approval on 5 September 20th, 2017. In Exhibit A-3, the applicant 6 applied for an extension based on unanticipated 7 construction and site design problems, stating the 8 basis just the way Planner Pyle told him he 9 qualified for. And in spite of her testimony, her 10 written email, Exhibit A-5, said the work with Toll 11 Brothers on the site and feasibility analysis with 12 staff regarding a new SPE proposal would 13 substantiate as working to resolve unanticipated 14 construction or design problems and substantial 15 effort to make progress on the entitlement project 16 for a single one-year extension. 17 Again, the single one-year extension was 18 for Wilmoor, not Toll. And she said in her email 19 Toll's work would be -- would substantiate for a 20 one-year extension. And that email was sent to Mr. 21 Wilson, not to Toll Brothers. 22 Two days later on September 20th, the 23 Technical Committee met and approved the extension. 24 The Technical Committee minutes state that the rest 25 -- request was approved. That's Exhibit A-6, page</p>
123	<p>1 then we'll proceed to closing and any questions I 2 may have. 3 (Whereupon, a recess was taken.) 4 THE HEARING EXAMINER: Okay. So we are 5 back on the record in number HEA-2018-01, also known 6 as LAND-2013-01720. We were about to proceed with 7 closing arguments of the attorneys here in the case. 8 And Ms. -- how do I pronounce it? Is it - 9 - 10 MS. ORRICO: Orrico. 11 THE HEARING EXAMINER: Orrico. 12 MS. ORRICO: It means rich with gold. I 13 got the name but not the gold. 14 THE HEARING EXAMINER: Very nice. Ms. 15 Orrico is going to proceed first; is that accurate? 16 MS. ORRICO: Thank you. 17 THE HEARING EXAMINER: Please. 18 MS. ORRICO: Mr. Examiner, this is clearly 19 a case of the City moving the ball -- several times, 20 in fact -- on Wilmoor. First, the City issues an 21 approval of the extension request, then months 22 later, without warning, suddenly issues a denial. 23 But the September 20th approval was validly issued 24 and was not appealed or revoked by the City; 25 therefore, it is still valid. And even if the</p>	125	<p>1 6. The City's planning director, Anderson, and 2 assigned planner, Sticka, each separately told Mr. 3 Wilson that same day that his extension request had 4 been approved that morning. Planner Sticka then 5 sent Mr. Wilson a written approval letter. That's 6 Exhibit A-4, page 4. 7 City staff then told the public at large 8 in multiple emails that the Technical Committee had 9 approved the request for the extension on September 10 20th. That's Exhibit A-7, Exhibit A-8, and Exhibit 11 A-9. 12 There is nothing in the code that says the 13 Technical Committee approval must be in the form of 14 a signed letter. The code merely requires -- and 15 I'm quoting here -- "A written record of the 16 Technical Committee's decision shall be prepared in 17 each case and may be in the form of a staff report, 18 letter, the permit itself, or other written 19 document." That's Redmond Zoning Code 21.76.060, 20 Sub E, Sub 2. 21 The written letter clearly qualifies as a 22 written document, which City staff itself recognized 23 when it told the neighbors, several neighbors, that 24 Wilmoor's request for extension had been approved on 25 September 20th. Again, that's Exhibit A-7, Exhibit</p>

126	<p>1 A-8, and Exhibit A-9.</p> <p>2 The City claims in its staff report on</p> <p>3 page 9 that the September 20th approval was not</p> <p>4 final because no Notice of Application had been</p> <p>5 given, as required by Redmond Zoning Code</p> <p>6 21.76.050.G.1, but that only applies to Type II</p> <p>7 decisions. The code clearly states in Table 21.76 -</p> <p>8 - sorry for all the numbers -- 21.76.050.A that no</p> <p>9 public notice is required for a Type I permit. And</p> <p>10 the City stated in writing, based on their own City</p> <p>11 attorney's review, that the extension would be</p> <p>12 classified as a Type I permit under Redmond Zoning</p> <p>13 Code 21.76.050.D. And that is Exhibit A-21. No</p> <p>14 Notice of Application was required.</p> <p>15 Not only did the City change its mind</p> <p>16 after the fact about which type of application the</p> <p>17 extension was, but staff told Mr. Wilson that they</p> <p>18 had never required public notice for this type of</p> <p>19 application before, but they were going to apply it</p> <p>20 for the first time to Wilmoor's application after</p> <p>21 they had already met, heard, and decided the matter.</p> <p>22 So what happened? The City let itself be</p> <p>23 intimidated by neighbors complaining about the</p> <p>24 City's conditions on the site plan entitlement that</p> <p>25 had been issued in 2015. Please see Exhibits A-7,</p>	128
127	<p>1 written determination identifying the condition on</p> <p>2 which the denial was based. That's Exhibit A-16.</p> <p>3 It simply states that Wilmoor didn't meet the</p> <p>4 conditions.</p> <p>5 There's nothing to apprise Wilmoor of why</p> <p>6 the Technical Committee denied its extension or what</p> <p>7 Wilmoor could have done to comply. In fact, the</p> <p>8 testimony of Ms. Anderson today was the first time</p> <p>9 we understood that it was denied based on no change</p> <p>10 of ownership. We didn't even apply based on that</p> <p>11 criteria.</p> <p>12 Bottom line is there are no applicable</p> <p>13 standards that an applicant or a hearing examiner</p> <p>14 can follow as a basis for the denial. Only after</p> <p>15 Wilmoor filed its appeal did the City go through</p> <p>16 each condition and why the applicant purportedly did</p> <p>17 not qualify. That's in the staff report, pages 7</p> <p>18 through 9.</p> <p>19 There's nothing in the code that says</p> <p>20 another's work on a site is not a basis for an</p> <p>21 extension, and the City knew that Wilmoor was facing</p> <p>22 expiration due to unanticipated construction and</p> <p>23 site design problems of Toll Brothers and twice told</p> <p>24 Wilmoor that it should apply for an extension based</p> <p>25 on the unanticipated and site design problems of</p>	129

<p style="text-align: right;">130</p> <p>1 Toll Brothers and told Wilmoor that it qualified 2 based on those reasons. 3 Again, the City for the first time today 4 said that they denied it based on the change of 5 ownership. If they had let Mr. Wilson know that, he 6 certainly would have submitted -- appointed -- 7 excuse me -- pointed to his application for an 8 extension, noting he never claimed there was a 9 change of ownership. That's the problem with making 10 up the rules. You can't tell what the rule is at 11 any given time, and that's simply not permitted 12 under Washington law. 13 "When a city adopts standards, they must 14 be drafted to give clear guidance to all parties 15 concerned. Applicants must have an understandable 16 statement of what is expected, and the city cannot 17 create standards on an ad hoc basis during the 18 review process." That's a quote from Anderson 19 versus City of Issaquah -- excuse me -- 70 Wash. 20 App. 64 at 82 to 83. 21 Here, the City approved Wilmoor's 22 application and then denied it and didn't tell him 23 how they could -- how he could apply. Then after 24 the fact, after the approval, after telling Mr. 25 Wilson the extension was approved, after telling</p>	<p style="text-align: right;">132</p> <p>1 uphold what you would consider the approval, 2 correct? 3 MS. ORRICO: Correct. 4 THE HEARING EXAMINER: I guess, what 5 authority would I have to do that to the extent that 6 the argument that sort of brought us here is that 7 the signed letter, you know, is the letter of denial 8 and that's been appealed? I guess, what authority 9 would I have to -- to reinstate that other letter? 10 MS. ORRICO: So let me clarify your -- 11 THE HEARING EXAMINER: Sure. 12 MS. ORRICO: -- question. Are you asking 13 based on Mr. Haney's allegations in his brief that 14 the appeal itself did not reference the original -- 15 THE HEARING EXAMINER: No. 16 MS. ORRICO: -- approval letter? 17 THE HEARING EXAMINER: No, no. I'm -- I'm 18 saying, as the Hearing Examiner, what authority 19 would I have to sort of revive or -- or -- I guess, 20 yeah, revive that previous if I agreed with you it 21 was approved. 22 MS. ORRICO: On two bases -- 23 THE HEARING EXAMINER: Please. 24 MS. ORRICO: -- Mr. Examiner. Number one, 25 if the denial letter was not validly issued, the</p>
<p style="text-align: right;">131</p> <p>1 everyone else that the extension was approved, the 2 City changed the rules and said, well, we didn't 3 really approve it and we're now going to require 4 that you start all over and post notice of an 5 application even though we've never required any 6 prior request for extension to post Notice of 7 Application, but we're going to now starting with 8 you even though we've already approved your 9 extension. What is an applicant supposed to do? 10 The City needs to give applicable standards to 11 follow. 12 Mr. Examiner, put yourself in the shoes of 13 an applicant where you get an approval letter and 14 then, months later, get a denial with no explanation 15 of why. How can my client know how the code will be 16 predictably administered in these applications? 17 I respectfully request that you uphold the 18 validity of the extension approval that was issued 19 on September 20th and find the denial letter issued 20 December 8th was improperly issued and, therefore, 21 invalid. 22 Thank you. 23 THE HEARING EXAMINER: Thank you. A few 24 questions for you. As a preliminary matter, you -- 25 one of the things you just requested would be that I</p>	<p style="text-align: right;">133</p> <p>1 approval stands. And number two, as I pointed out 2 under Nykreim, the City would have had to appeal the 3 approval letter had they felt it was in error and 4 their appeal period has run. They did not appeal it 5 within the appeal time period set forth in their 6 code. 7 THE HEARING EXAMINER: Okay. And I -- you 8 were very good about not asking me to consider 9 things like equity, which I have no authority to do. 10 Is it your contention that, if I were to say that 11 the December letter, denying it, was -- was -- if 12 that was made in error, thereby re-invoking -- it -- 13 again, this is if I agreed with you -- re-invoking 14 the earlier approval from September 20th, is it your 15 contention that the LUPA appeal period is now passed 16 for both the City and all the folks that were 17 interested in that application? 18 MS. ORRICO: So I'm going to answer that a 19 little bit more broadly. 20 THE HEARING EXAMINER: Please. 21 MS. ORRICO: We're not re-invoking 22 anything. 23 THE HEARING EXAMINER: Sure. You're 24 saying it -- 25 MS. ORRICO: It --</p>

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1 THE HEARING EXAMINER: -- just stands.
 2 MS. ORRICO: It just stands.
 3 THE HEARING EXAMINER: Okay. That's --
 4 MS. ORRICO: And --
 5 THE HEARING EXAMINER: -- good
 6 clarification.
 7 MS. ORRICO: And with regard to the LUPA
 8 period, yes, that LUPA period for that approval
 9 letter ran -- I think it was October 4th, 2017,
 10 under the City's -- not just LUPA, but under the
 11 City's own appeal provisions. However, there is
 12 certainly still an opportunity to make a LUPA appeal
 13 based on whatever your decision is.
 14 THE HEARING EXAMINER: Okay. So for
 15 instance, I believe there was reference to Ms.
 16 Chan's letter. There was an email to Ms. Chan, who
 17 was interested in this application and had inquired
 18 about appeal periods. You pointed out several
 19 instances in the -- you know, in the course of
 20 making your argument that, oh, there was an approval
 21 on September 20th. That's why they're telling me --
 22 you know, telling folks about appeal periods.
 23 What I'm curious about is those
 24 correspondences say you'll be able to appeal when
 25 that letter comes; you'll get a copy of that letter.

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1 Essentially, that letter never came to any of those
 2 people.
 3 MS. ORRICO: Well, it's a little bit more
 4 complicated --
 5 THE HEARING EXAMINER: Sure.
 6 MS. ORRICO: -- than that because -- and
 7 this gets to the Notice of Application. They were
 8 not parties of record because it was a Type I
 9 permit. And so no notice went to them. They were
 10 not parties of record. So --
 11 THE HEARING EXAMINER: So under Lujan or
 12 something, they wouldn't have required notice anyway
 13 because --
 14 MS. ORRICO: Correct.
 15 THE HEARING EXAMINER: -- LUPA's an awful
 16 -- awful mean when it comes to things like that?
 17 MS. ORRICO: Correct.
 18 THE HEARING EXAMINER: Okay. I felt like
 19 I had other questions, but --
 20 MS. ORRICO: I'm still here if they occur
 21 to you.
 22 THE HEARING EXAMINER: I know you're --
 23 thank you. Okay. For the moment, I think I'll turn
 24 it over to Mr. Haney. Thank you.
 25 MS. ORRICO: Thank you, Mr. Examiner.

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1 MR. HANEY: Thank you, Mr. Examiner.
 2 First of all, I'd like to begin with the
 3 fact that there's been no evidence presented that
 4 the extension request met any of the criteria set
 5 forth in 21.76.090. That section says that the
 6 extension can occur on a yearly basis if an
 7 applicant meets one of the following conditions: A,
 8 economic hardship, which there's been no allegation
 9 of here; B, change of ownership with -- which Mr.
 10 Wilson admitted today has not occurred and,
 11 therefore, they do not meet; C, unanticipated
 12 construction and/or site design problems, but there
 13 has been no testimony from anybody that either
 14 Wilmoor or Toll experienced any unanticipated
 15 construction or design -- site design problems.
 16 The only testimony that has been presented
 17 here today is that this -- that Toll and Wilmoor
 18 came to the City in February of 2017 saying, hey,
 19 we've got this project that Toll is going to
 20 propose, and then there was no project actually
 21 applied for until August, a period of some five
 22 months or six months later. So there's no
 23 indication that either Wilmoor or Toll experienced
 24 any unanticipated construction and/or site design
 25 problems. So that criteria simply isn't met.

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1 And then lastly, other circumstances
 2 beyond the control of the applicant determined
 3 acceptable by the Technical Committee. There's
 4 nothing here that indicates that there are any
 5 circumstances beyond the control of the applicant.
 6 The applicant was the one who decided to sell the
 7 property to Toll. Toll was the one who decided to
 8 apply in August of 2017 versus in February of 2017.
 9 None of that was beyond the control of the
 10 applicant.
 11 So let's just be very clear and start with
 12 the proposition that the -- there's been no evidence
 13 that has been presented here, and there was no
 14 evidence that was cited to the Technical Committee
 15 that any of the criteria for the extension were met.
 16 Second, with respect to the February 20th
 17 Technical Committee meeting, we presented testimony
 18 as to how the Technical Committee operates and how
 19 the Technical Committee makes its decisions. In our
 20 brief, we cited to the section of the community
 21 development guide governing the Type II permit
 22 review. And let me just say that the reason why
 23 this is a Type II versus a Type I is because the
 24 Technical Committee is the decision maker. And if
 25 you look at the City code, Type I permits are very

138	<p>1 simple permits like building permits, things of that 2 nature, and they are generally decided by the 3 department director. 4 Type II permits are decided by the 5 Technical Committee. And Type II permits, in the 6 case of an SPE, a site plan entitlement is a Type II 7 permit. And the City originally looked at this as 8 possibly being a Type I, and that was an email that 9 went out from Mr. Sticka. We agree with that. But 10 after the planning director looked at it more 11 closely, she determined that it was a Type II permit 12 because it was a Technical Committee review and 13 because the SPE was a Technical Committee review and 14 was a Type II permit. So this was a Type II permit, 15 and it required additional notice. 16 But let's -- let's go back to the 17 September 20 meeting and what actually came out of 18 that. Yes, there are some meeting minutes, minutes 19 which were not publicly circulated, which aren't 20 available to the public without a public records 21 request that aren't posted anywhere. They're for 22 internal staff use. And it says that the extension 23 was approved. 24 We also know from Ms. Anderson's testimony 25 that the extension -- that there were questions</p>	140
139	<p>1 about the extension and that the extension had been 2 granted for a basis which we now know is not 3 actually correct, that there is no change of 4 ownership. As the -- as it indicates in the meeting 5 minutes, the extension and the discussion of the 6 Technical Committee on September 20th related to 7 whether or not there had been a change of ownership. 8 And the Technical Committee discussion had been that 9 all of the other bases hadn't been proven. Only a 10 change of ownership was the only option. And as Ms. 11 Anderson said, the Technical Committee gave a 12 tentative approval to this and requested that there 13 be additional information regarding change of 14 ownership. 15 And what we know now is that, even though 16 the contract was there and that the letter was 17 provided, Mr. Wilson admitted today ownership has 18 not changed. So it did not meet the criteria. 19 The Technical Committee decisions are 20 required to be in writing, and they are required to 21 be issued by the Technical Committee. And you heard 22 testimony today that the way the Technical Committee 23 operates is to provide -- is for the Technical 24 Committee decision to be drafted in the form of a 25 letter. And then the Technical Committee, meaning</p>	141

142	<p>1 because it's a Technical Committee decision that 2 requires a Type II review. So that is what we are 3 presenting to you today. 4 So I -- I think -- to -- to close, I think 5 what we come down to here today is we have an 6 applicant who received a site plan entitlement 7 approval on December 8th of 2015. They sat on that 8 site plan approval, did nothing to perfect their 9 rights under that site plan approval for a period of 10 -- until February 2017. Now, that's a period of 15 11 months. They sat on it; they did nothing. Fifteen 12 months out of the twenty-four months available, they 13 sat on it and nothing. 14 In February, they came in, and they told 15 the City planner, well, now we -- we've sold it to 16 Toll and we want to -- Toll wants to develop it, so 17 we -- we're going to -- Toll is going to take over 18 and do its application on this project; but we want 19 to make sure that our application is still active. 20 And the planner urged them -- Ms. Pyle urged them 21 submit that Toll application as soon as possible so 22 we can make sure that that application is -- is -- 23 is completed and done so that there doesn't have to 24 be an extension. 25 In fact, Toll didn't submit its</p>	144	<p>1 compliance with the criteria because no evidence was 2 presented. 3 And Ms. Orrico makes a big deal out of 4 saying, well, gee, that letter didn't tell us what 5 the problems were. It is the applicant that has the 6 burden of showing to the Technical Committee that 7 they meet the qualifications or meet the criteria 8 for an extension. It is not up to the Technical 9 Committee to go back to the applicant and say, gee, 10 here's the arguments we'd suggest to you why you -- 11 why you did, or here's the evidence you might rely 12 upon to convince us. It is up to the applicant to 13 present something to the Technical Committee on 14 which it can rely, and nothing was presented here 15 other than Mr. Wilson's September 18th request, 16 which contains nothing in the way of any evidence. 17 And the fact that the Technical 18 Committee's decision, therefore, simply says we had 19 no evidence to show that the criteria had been met, 20 that's simply the only logical conclusion that can 21 be reached. 22 We ask you to uphold the decision of the 23 Technical Committee in this case and to deny the 24 appeal. 25 Thank you.</p>
143	<p>1 application until August. So between February and 2 August, another six months goes by. And -- and 3 there is no submittal of anything. Is that within 4 the control of the applicant, or is that within the 5 control of the City? Those are within the control 6 of the applicant whether anything. 7 And finally, we come down to an extension 8 is applied for at the end of the process. No 9 information is provided to support the extension. 10 Nothing addresses the criteria as to why there's 11 been any sort of unanticipated design problems, 12 unanticipated construction problems, not that we 13 have sold the property to a develop -- to another 14 developer, but construction or site design problems. 15 There is no evidence presented to the Technical 16 Committee that there's any such things. And Ms. 17 Anderson testified that there were no unanticipated 18 site design or construction problems. And now it -- 19 they're relying upon a draft Technical Committee 20 decision. 21 We believe that the Technical Committee 22 had every opportunity to go back and revisit its 23 decision at any time up until it issued a final 24 decision on December 8th, 2017. It did so. Its 25 decision on December 8th, 2017, is, in fact, in</p>	145	<p>1 THE HEARING EXAMINER: So same question, 2 basically, I had asked earlier. If I grant the 3 appeal, what happens? I mean, what's the -- where 4 does that lead us, I suppose, and what authority do 5 I have in the process? 6 MR. HANEY: Well, again, I think your 7 authority is relating to the December 8th Technical 8 Committee decision. And if you grant the appeal, 9 you can vacate that decision. 10 THE HEARING EXAMINER: Okay. 11 MR. HANEY: Okay. 12 THE HEARING EXAMINER: And then are we at 13 -- where are we at at that point? 14 MR. HANEY: I believe that there is no 15 decision at that point because the Technical 16 Committee never issued a draft -- never issued a 17 final decision in September 20th. So we would be at 18 the same point. We -- we have -- there is no -- 19 THE HEARING EXAMINER: Okay. 20 MR. HANEY: -- decision. There was no 21 decision on the 20th. And vacating the December 8th 22 decision simply leaves us back in the situation 23 where there is no decision at all. 24 THE HEARING EXAMINER: Except we'll be in 25 March, and the entitlement would have expired back</p>

146	<p>1 in December. Is there a tolling period while 2 something like this happens? 3 MR. HANEY: There's nothing -- there's 4 none that I am aware of in the City code. 5 THE HEARING EXAMINER: Okay. So -- 6 MR. HANEY: There's no tolling period that 7 is -- that is in the City code relating to it. 8 THE HEARING EXAMINER: Okay. So on one 9 side, it sounds like if I vacate this decision, were 10 I to agree with the appellant, we're in a position 11 where no one can challenge it under LUPA. On the 12 other side, if I agree with you, we're in a position 13 where he can't challenge any new decision that comes 14 out. Well, actually, no new decision is required, I 15 suppose, because we've already passed the period in 16 which his entitlement is -- does that make sense? 17 I'm kind of -- 18 MR. HANEY: Yeah, yeah -- 19 THE HEARING EXAMINER: -- between a rock 20 and a hard place here. 21 MR. HANEY: If you -- if you agree with 22 the City and the -- the Technical Committee's 23 decision of December 8th stands, then the Wilmoor 24 site plan entitlement has expired. Of course, Mr. 25 Wilson and Wilmoor may appeal your decision under</p>	148
147	<p>1 LUPA -- 2 THE HEARING EXAMINER: Right. 3 MR. HANEY: -- to the Superior Court. But 4 assuming that the City's -- 5 THE HEARING EXAMINER: That path forward 6 makes sense. 7 MR. HANEY: Right. So -- 8 THE HEARING EXAMINER: It's every other 9 path forward that -- that runs into major challenges 10 that I can see. And I'm not -- 11 MR. HANEY: Correct. 12 THE HEARING EXAMINER: -- saying I agree 13 with your argument. I'm just saying -- 14 MR. HANEY: No, I -- I understand. 15 THE HEARING EXAMINER: -- the outcome 16 makes -- you know, but thoughts on those other two 17 paths moving forward, I suppose. Am I accurate in 18 my understanding? 19 MR. HANEY: Yes. 20 THE HEARING EXAMINER: Okay. 21 MR. HANEY: I mean, I -- I think -- I 22 think if -- if -- if you -- if you were to -- if you 23 are to -- well, I -- I -- I guess I -- I'm -- I want 24 to qualify that just briefly. If you decide against 25 the City and you decide that the City's December</p>	149

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1 MR. HANEY: -- decision.
 2 THE HEARING EXAMINER: So no matter what I
 3 decide, if I -- if someone thinks the decision is
 4 incorrect, the course is through taking my decision
 5 through LUPA. And that makes sense. I just wanted
 6 to make --
 7 MR. HANEY: Yeah, and -- and --
 8 THE HEARING EXAMINER: -- sure we're --
 9 MR. HANEY: And I -- I -- I think the only
 10 qualifier I would have with that is, since -- since
 11 the -- since none of the citizens had the ability to
 12 participate --
 13 THE HEARING EXAMINER: Right.
 14 MR. HANEY: -- in either that Technical
 15 Committee decision or in your decision today, the
 16 question is what standing would they have to do
 17 that. But I -- I -- again, I -- I haven't thought
 18 that through. I don't represent them, so --
 19 THE HEARING EXAMINER: Sure.
 20 MR. HANEY: I know what standing my client
 21 would have to --
 22 THE HEARING EXAMINER: Yeah. We know what
 23 --
 24 MR. HANEY: -- appeal, and that's all I
 25 know.

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1 THE HEARING EXAMINER: Yeah. Great.
 2 Well, thank you for answering those questions.
 3 Anything further before we close the record?
 4 MR. HANEY: Not from us.
 5 THE HEARING EXAMINER: Just so that we're
 6 clear on everything, we do have another hearing that
 7 was going to start five minutes ago that involves
 8 the same property and, I think, some of the same
 9 actors. From a timing perspective, I notice there
 10 are two different provisions in the municipal code.
 11 One references a 90-day window in which to address
 12 an appeal. And then the more common one is a 10-day
 13 -- you know, 10-working-day window in which to
 14 address an appeal.
 15 With two big long hearings today, I -- I
 16 suspect it -- it's going to be a challenge. We
 17 always do meet deadlines. But I'm -- I -- at the
 18 mercy of the appellant and the City to see if they
 19 might be amenable to giving me an extra week or so
 20 in which to produce my final decision on the -- the
 21 appeal here.
 22 MR. HANEY: The City would have no
 23 objection to that.
 24 THE HEARING EXAMINER: And our appellant?
 25 MS. ORRICO: If you're talking an extra

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1 week after the 10-day period --
 2 THE HEARING EXAMINER: Yes.
 3 MS. ORRICO: -- yes --
 4 THE HEARING EXAMINER: Not the 90-day.
 5 MS. ORRICO: -- the 90-day. Okay.
 6 THE HEARING EXAMINER: Yeah. I meant,
 7 essentially, we'll try to get it done within 14
 8 days. But if I need an extra day or two, I'd prefer
 9 to produce something, you know, cogent and legally
 10 defensible rather than rush something out. So
 11 MS. ORRICO: Absolutely not a problem.
 12 THE HEARING EXAMINER: Okay. Thank you
 13 for that.
 14 So with that, I think we'll go ahead and
 15 close the record on this first appeal. Thank you
 16 everyone for being here.
 17 (Whereupon, the proceedings were
 18 concluded.)
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1 CERTIFICATE
 2
 3 I, Karynn Willman, do hereby certify that the
 4 proceedings named herein was professionally transcribed
 5 on the date set forth in the certificate herein; that I
 6 transcribed all testimony adduced and other oral
 7 proceedings had in the foregoing matter; and that the
 8 foregoing transcript pages constitute a full, true, and
 9 correct record of such testimony adduced and oral
 10 proceeding had and of the whole thereof.
 11
 12
 13 IN WITNESS WHEREOF, I have hereunto set my hand this
 14 22nd day of May, 2018.
 15
 16
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 19
 20 /S/ Karynn Willman
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