

APPEAL (LAND-2018-00341)
APPROVAL OF EXTENSION REQUEST OF LAND USE PERMIT (LAND-2013-01720)
EXTENSION REQUEST
PLANNING DEPARTMENT REPORT TO HEARING EXAMINER PRO-TEM

MEMO TO: Andrew Reeves, Hearing Examiner Pro-Tem

FROM: Planning Department

DATE: May 30, 2018

PREPARED BY: Ben Sticka, Planner

SUBJECT: BARRY SCHNELL'S APPEAL OF AN ADMINISTRATIVE
DECISION THAT APPROVED THE EXTENSION OF SITE PLAN
ENTITLEMENT (LAND-2013-01720).

REQUEST: The appellant Barry Schnell is appealing the extension of Site Plan Entitlement (LAND-2013-01720). On March 20, 2018 the Hearing Examiner Pro-Tempore issued his decision, holding that the City was barred from reconsidering or revoking the Technical Committee's September 20, 2017 approval of Wilmoor's extension request.

The City did not appeal the March 20, 2018 decision by the Hearing Examiner Pro-Tempore and therefore considers itself bound by that decision. The City does not intend to file a brief, call witnesses or present exhibits in the hearing on this matter.

HEARING DATE: May 30, 2018

ATTACHMENTS

- EXHIBIT 1: December 21, 2017 Wilmoor appeal application and attachment.
- EXHIBIT 2: December 8, 2015 site plan entitlement approval letter and notice of decision.
- EXHIBIT 3: September 18, 2017 site plan entitlement extension request letter from Wilmoor to City.
- EXHIBIT 4: December 8, 2017 Denial of extension request letter from City to Wilmoor.
- EXHIBIT 5: December 21, 2017 Wilmoor appeal application and attachment
- EXHIBIT 6: November 13, 2017 notice of application for Wilmoor extensions request
- EXHIBIT 7: February 8, 2017 email from planner Sarah Pyle to Greg Wilson.
- EXHIBIT 8: Screenshot of assessor information for Rose Hill Cottages parcel.
- EXHIBIT 9: Meeting minutes from September 20, 2017 Technical Committee meeting.
- EXHIBIT 10: September 21, 2017 email from Ben Sticka to Greg Wilson attaching draft Technical Committee approval letter.
- EXHIBIT 11: September 20 through 22, 2017 emails among Laura Chan, Redmond resident; John Marchione, Mayor of Redmond; Karen Anderson, Director of Planning and Community Development; Ben Sticka, Planner; and Steve Fischer, Planning Manager.
- EXHIBIT 12: November 8, 2017 email from Ben Sticka to Greg Wilson regarding notice of application for extension request.
- EXHIBIT 13: Meeting minutes for December 6, 2017 Technical Committee meeting.
- EXHIBIT 14: December 6, 2017 letter from Greg Wilson to Ben Sticka confirming purchase and sale agreement between Wilmoor and Toll WA LP.
- EXHIBIT 15: March 20, 2018 Hearing Examiner Pro-Tem's decision overturning City's decision to deny Wilmoor extension request.
- EXHIBIT 16: April 3, 2018 Schnell appeal application.

BACKGROUND

Appellant Barry Schnell
13319 NE 112th Place
Redmond, WA 98052

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

Land Use Permit Key Dates

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

Appeal Filed: April 3, 2018

Hearing Date: May 30, 2018

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

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

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

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

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

Surrounding Land Use and Zoning:

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

Access: Vehicular access for this site is from 132nd Avenue NE.

SEPA: SEPA is not required for an Extension request.

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

BACKGROUND

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

Since approval of Site Plan Entitlement (LAND-2013-01720) in December of 2015, minimal communications have occurred between City staff and the applicant. These communications included phone calls and an email (Exhibit 7: February 8, 2017 email from planner Sarah Pyle to

Greg Wilson). On February 8, 2017 an email was sent from Mrs. Sarah Pyle, Senior Planner, to Mr. Greg Wilson, Applicant, indicating: “Your current entitlement for Rose Hill Cottages approval will remain in effect until at which time you voluntarily request for them to be withdrawn and they are followed by a new application approval for Entitlements for the parcel or at which time the current entitlements expire.”

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

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

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

Three days later, staff completed its analysis and prepared a Notice of Application on November 13, 2017 with a comment period that ended December 4, 2017 (Exhibit 6: November 13, 2017

notice of application for Wilmoor extensions request). During the comment period, staff received six comments. Upon completion of the comment period, staff completed its analysis and presented its findings to the Technical Committee at their December 6, 2017 meeting (Exhibit 6: November 13, 2017 notice of application for Wilmoor extensions request).

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

On March 20, 2018, the City of Redmond Hearing Examiner Pro-Tem granted the appeal to overturn the Technical Committee’s decision denying Wilmoor Development Corporation (Appellant) a one-year extension of the Rose Hill Cottages Site Plan Entitlement. This decision indicated the following: *Because the Technical Committee sent the Appellant a “written document indicating approval” of the project on September 20, 2017, as required by Redmond Zoning Code (RZC) 21.76.060.E.2, and that decision was neither appealed by any interested party nor revoked by the City of Redmond (City), that decision is, by default, a final decision of the Technical Committee that remains valid, and renders the later reconsideration of the extension request and subsequent issuance of a second decision denying the proposal invalid.* (Exhibit 15: March 20, 2019 Hearing Examiner Pro-Tem decision overturning City’s decision to deny Wilmoor extension request).

JURISDICTION

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

decision criteria, 3) the specific relief requested, and 4) any other information reasonably necessary to make a decision on the appeal.

BURDEN OF PROOF

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

APPELLANT'S BASIS FOR APPEAL

The appellant Barry Schnell is appealing the extension of Site Plan Entitlement (LAND-2013-01720). On March 20, 2018 the Hearing Examiner Pro-Tempore issued his decision, holding that the City was barred from reconsidering or revoking the Technical Committee's September 20, 2017 approval of Wilmoor's extension request.

The appeal is based upon the following assertions:

1. The City erred in its decision on the extension request. The appellant asserts that applicant failed to meet any of the decision criteria for granting an extension found in RZC 21.76.090 letters: A) Economic hardship has not been demonstrated. B) Change of ownership has not occurred. C) Unanticipated construction and/or site design problems have not been adequately identified by the applicant. D) Circumstances beyond the control of the applicant, determined acceptable by the approval authority.

RELIEF SOUGHT BY APPEAL

The appellant is seeking the following relief through this appeal:

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

The Technical Committee's decision was not to approve the extension, but to deny the request for extension. On March 20, 2018, the Hearing Examiner Pro-Tem overturned the City's decision to deny the extension request.

ANALYSIS

The appellant has made the assertion that reiterates the City's original position from February that denied the extension request based upon the decision criteria found in RZC 21.76.090. The appellant has offered no new arguments or information. However, the Technical Committee's decision was overturned by the Hearing Examiner Pro-Tem on March 20, 2018 (Exhibit 15: March 20, 2019 Hearing Examiner Pro-Tem decision overturning City's decision to deny Wilmoor extension request). Therefore, the City is not before the Hearing Examiner Pro-Tem to defend its position, but to let the Hearing Examiner consider the merits of the subject appeal.

STAFF RECOMMENDATION

Based on the analysis included in this report, staff recommends that the Hearing Examiner Pro-Tem uphold his decision to grant the appeal to overturn the Technical Committee's decision denying Wilmoor Development Corporation (Appellant) a one-year extension of the Rose Hill Cottages Site Plan Entitlement (Exhibit 15: March 20, 2019 Hearing Examiner Pro-Tem decision overturning City's decision to deny Wilmoor extension request).

CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION

The appellant Barry Schnell has not provided proof or facts illustrating how the City erred. The appellant has the burden to prove that the City erred in the approval of the extension of Site Plan Entitlement. On March 20, 2018 the Hearing Examiner Pro-Tempore issued his decision, holding that the City was barred from reconsidering or revoking the Technical Committee's September 20, 2017 approval of Wilmoor's extension request.

The City did not appeal the March 20, 2018 decision by the Hearing Examiner Pro-Tempore and therefore considers itself bound by that decision. The City, therefore, does not intend to file a brief, call witnesses or presents exhibits in the hearing on this matter. In summary, the City is not before the Hearing Examiner Pro-Tem to defend its position, but to let the Hearing Examiner consider the merits of the subject appeal.



Erika Vandebrande, Interim Planning Director
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