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BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeal of
RTC 74th Street Property LLC

Of the November 17, 2017 Approval of BLDG-
2016-09558 related to the Redmond Town
Center Apartments project in Redmond, WA

No. _____

**APPELLANTS' PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The Appellants submit the following Findings of Fact and Conclusions of Law in support of their appeal of the City of Redmond's imposition of impact fees for public streets and roads and for publicly owned parks, open space, and recreation facilities as a condition of issuing a building permit for the Redmond Town Center Apartments Project.

I. FINDINGS

1. This appeal arose out of the City of Redmond requirement that a transportation impact fee in the amount of \$1,229,445.23 and a park impact fee in the amount of \$826,492.14 ("Impact Fees") be paid to the City as a condition of issuance of building permit BLD-2016-09558 for the Redmond Town Center Apartments project (the "Project"). The Impact Fees were paid to the City under protest and a timely application for appeal was filed in this matter.

2. The Project is a six story mixed use building with 286 residential units, 9,100 square feet of commercial space and 537 parking stalls. The Project site is a part of the land included in the Redmond Town Center mixed use master planned development. As a condition of approval of the Redmond Town Center Master Plan, the City required, and the landowner provided, mitigation of transportation and park, recreation and open space impacts under the State Environmental Policy Act ("SEPA"). The City also required such mitigation to be paid in

1 advance to mitigate impacts for full build of the Redmond Town Center Master Plan
2 development.

3 3. Appellants are the successor owners of Redmond Town Center, including RTC
4 74th Street Property, LLC, the multi-family residential developer who has obtained land use
5 approvals and the building permit for construction of the Project.

6 4. Appellants contend that the City may not lawfully require payment of the Impact
7 Fees because impacts of development of the property on (1) public transportation system
8 improvements and (2) park, recreation, trail and open space system improvements have already
9 been mitigated under SEPA in satisfaction of conditions of approval of the Redmond Town
10 Center Master Plan development of which the Project is a part.

11 5. Appellants request the full amount of the Impact Fees be refunded. They contend
12 that the City's failure to exempt the Project from payment of duplicative fees for transportation
13 and park impacts, or to fully credit Appellants for their mitigation of these same impacts,
14 amounts to unlawful "double dipping" in violation of RCW 82.02.100(1) and RMC
15 3.10.060(A)(6). They also allege it violates the proportionality standards of RCW 82.02.020 and
16 constitutes an unconstitutional taking of property.

17 6. The first issue is whether the Project is exempt from payment of impact fees for
18 transportation and park impacts under RCW 82.02.100 and RMC 3.10.060.

19 7. RCW 82.02.100 provides as follows: "A person required to pay a fee pursuant to
20 RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under
21 RCW 82.02.050 through 82.02.090 for those same system improvements."

22 8. RMC 3.10.060(A)(6) contains a similar exemption:

23 Where a fee has previously been paid for the development activity
24 under the State Environmental Policy Act (SEPA) for all of the
25 system improvements for which impact fees are imposed by this
26 chapter, the development activity shall be exempt from the
27 payment of all impact fees pursuant to RCW 82.02.100. Where a
fee previously paid for the development activity under SEPA does
not cover all system improvements for which an impact fee is
imposed under this chapter, an impact fee credit shall be given to

1 ensure that the City is not collecting both SEPA and impact fees
2 for the same system improvements.

3 9. The first issue regarding compliance with RCW 82.02.100 is whether Appellants
4 were required to pay a fee pursuant to RCW 43.21C.060 for system improvements.

5 10. The City imposed the following conditions under SEPA as a condition of
6 approval of the 1996 Redmond Town Center Master Plant.

7 Grant easements to the City allowing perpetual public use of 44
8 acres of the owner's land valued at \$7,927,900 in 1999 for public
9 park, recreation, trail and open space uses. Exhibit A-23, master
10 record page 0789-0830; Testimony of Roberta Lewandowsky, Tr.
11 2-26-18, pages 89-94.

12 Dedicate portions of the owner's land for public pedestrian,
13 equestrian and bicycle trails, streets and other public transportation
14 system improvements. Exhibit A-6, master record pages 0242-
15 028; testimony of Roberta Lewandowsky, Tr. 2-26-18, pages 89-
16 92.

17 Design and construct at the owner's cost, and convey to the City
18 for public use, completed public transportation system
19 improvements included in City's Transportation Improvement
20 Program ("TIP") at a cost identified in the TIP of \$14,400,000;
21 Exhibit A-29, master record pages 0927-0929; Exhibit A-30,
22 master record pages 0931-0939. The Planning Commission
23 recommendation to the City Council for approval of the 1995
24 Proposal identified the costs of off-site transportation
25 improvements as \$16,519,000, comprised of \$7,416,000 for
26 improvements, a \$1,247,000 payment to a local improvement
27 district, and \$7,857,000 for value of land dedicated for right-of-
way. Exhibit A-25, master record page 0853.

Pay fees to the City of Redmond for transportation system
improvements in the amount of \$229,277.00. Exhibit A-29, master
record pages 0927-0929; Exhibit A-30, master record pages 0931-
0939.

Pay fees to the Washington State Department of Transportation in
the amount of \$136,675. Exhibit A-28, master record pages
0907-0925.

11. With few exceptions, the SEPA mitigation was required to be provided prior to
occupancy of the first phase of development of Redmond Town Center. Exhibit A-6, master
record pages 0242-028; testimony of Roberta Lewandowsky, Tr. 2-26-18, pages 89-92.

1 12. The Redmond Town Center owner provided and paid in advance for this
2 mitigation to address impacts to two types of system improvements: transportation facilities and
3 park, open space and recreation facilities.

4 13. The mitigation was intended to mitigate impacts to transportation, park, open
5 space and recreation impacts for full build out of the Redmond Town Center development.

6 14. The City required payment of impact fees on the Project under authority RCW
7 82.02.050-090 for the following system improvements: transportation facilities and park.

8 15. The issue then is whether Appellants were required to pay fees for the “same
9 system improvements” under RCW 82.02.100(1).

10 16. The City contends that they were not since “system improvements” are defined in
11 RCW 82.02.090(9) to mean “public facilities that are included in the capital facilities plan and
12 are designed to provide service to service areas within the community at large, in contrast to
13 project improvements.” “Public facilities” are further defined RCW 82.02.090(7) to mean “the
14 following capital facilities owned or operated by government entities: (a) Public streets and
15 roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and
16 (d) fire protection “

17 17. According to the City, the improvements constructed by Redmond Town Center
18 do not qualify as system improvements because they are not included in the City’s capital
19 facilities plan at the time the impact fees are being imposed today and have not been included in
20 the City’s capital facilities plan since they were constructed many years ago. Thus, the City did
21 not require Appellants to pay impact fees for the “same system improvements.”

22 18. Appellants contend that the term “same system improvements” as used in RCW
23 82.02.100 refers to the same type of public facilities for which impact fees may be imposed—
24 i.e., for streets and roads, parks, open space and recreation facilities, school facilities, and fire
25 protection.

26 19. Under the City’s interpretation, even though the Appellants paid in advance to
27 mitigate impacts to transportation facilities and parks, open space and recreation facilities for full

1 build-out of the Redmond Town Center, the moment such facilities are completed and taken off
2 the capital facilities plans, under the City's interpretation of RCW 82.02.100(1) and RMC
3 3.10.060(A)(6), the City can then impose impact fees to mitigate the same impacts. The City's
4 interpretation would penalize Appellants for paying in advance for SEPA mitigation for full
5 build out of all phases of the Redmond Town Center, because if the Appellants had not been
6 required to do so, but instead to address mitigation of impacts for each phase of development,
7 Appellants would only have been required to mitigate impacts to transportation and park
8 facilities for the current phase of development or pay impact fees for such facilities: The
9 Appellants would not have been required to pay both consistent with RCW 82.02.100(1) and
10 RMC 3.10.060(A)(6). Yet this is precisely what the City's interpretation of "same system
11 improvements" allows.

12 20. The City's interpretation of "same system improvements" is inconsistent with the
13 meaning and purpose of RCW 82.02.100(1), which is to ensure "specific developments do not
14 pay arbitrary and duplicative fees for the same impacts." RCW 82.02.050(1)(c).

15 21. The City's interpretation would render RCW 82.02.100(1) and RMC
16 3.10.060(A)(6) meaningless where, as in this case, the property owner's own actions and
17 expenditures—constructing complete system improvements and dedicating land that constitutes
18 the system improvements—have caused those specific system improvements to be removed from
19 the City's capital facilities plan. The flaw inherent in the City's argument is that the property
20 owner must now pay an impact fee to fund a type of public facilities that the owner already
21 provided because the facilities are no longer on the capital facility plan—because the property
22 owner already provided them.

23 22. In this case, Appellants paid full mitigation under SEPA to mitigate impacts to
24 two types of system improvements from full build out of Redmond Town Center: to "Public
25 streets and roads" and to "publicly owned parks, open space, and recreational facilities," two of
26 the four types of system improvements for which the City can impose impact fees. RCW
27 82.02.090(7), (9). Thus, consistent with RCW 82.02.100(1), the City should be prohibited from

1 imposing impact fees to fund improvements to these same types of system improvements for
2 which mitigation was provided under SEPA. Any other interpretation would lead to arbitrary
3 and duplicative payments for the same impacts.

4 23. Since the Project is part of the Redmond Town Center, and its transportation and
5 park impacts are adequately addressed and covered by the SEPA mitigation provided in advance
6 of development impacts for full build-out for the Redmond Town Center, the Project should be
7 exempt from imposition of Impact Fees for these very same impacts. Any other result would
8 result in forcing Appellants to pay twice for the same impacts.

9 24. The City does not disagree that the SEPA mitigation adequately addresses
10 transportation and park impacts for full build out of Redmond Town Center. Instead, it claims
11 that the Project is not entitled to the benefit of the SEPA mitigation for the Redmond Town
12 Center because (1) residential use was not part of Redmond Town Center or its review and
13 mitigation under SEPA, (2) the Project is not part of or a phase of the Redmond Town Center,
14 which the City alleges is built-out, and (3), with respect to transportation mitigation, the Traffic
15 Mitigation Agreement expired in 2010.

16 25. With regard to the first claim, residential use was included in the mix of land uses
17 the City took into account when it required mitigation of development impacts under SEPA for
18 the Redmond Town Center Master Plan. For example, in the 1995 EIS Addendum, while
19 acknowledging that housing was not proposed to be constructed in the first phase of the
20 Redmond Town Center Master Plan, the City anticipated residential development as a part of
21 future development phases. Further, the EIS Addendum evaluated the impacts of residential
22 development, and discussed City residential development standards as applicable to the proposed
23 development. In particular, Parcel 5, the site of the Project, was designated as a site for future
24 housing development.

25 26. SEPA review for subsequent phases and amendments to the Redmond Town
26 Center also addressed potential residential use. In particular, environmental review of the 1997
27 amendment to the Redmond Town Center Master Plan to increase the commercial cap on

1 development from 1.375 to 1.4 million square feet analyzed standards that would establish a
2 residential height limit range for residential uses, and a 2001 amendment to the Redmond Town
3 Center Master Plan to increase the commercial cap on development from 1.4 to 1.8 million
4 square feet analyzed the environmental impacts of up to 500 units of housing on a portion of
5 Parcel 5, the site of the Project. Residential use was an anticipated use and included in the mix
6 of land uses the City took into account when it required mitigation of development impacts under
7 SEPA.

8 27. With regard to the claim that the Project is not part of the Redmond Town Center
9 and that the Redmond Town Center is not built-out, the City contends that Redmond Town
10 Center is not built-out as to allowable square footage, and thus the impacts of the Project were
11 not included in the SEPA review for the Redmond Town Center.

12 28. The Project is part of the Redmond Town Center and a phase of residential
13 development, the first for the Redmond Town Center. Its site on Parcel 5 has long been
14 considered a potential site for housing, and in the 2001 amendment to the Redmond Town Center
15 Master Plan, residential use of the site is addressed and analyzed in the environmental review
16 under SEPA, including the traffic impact analysis. The Project also is required to comply with
17 the Redmond Town Center Master Plan and Design Guidelines and is subject to the annual
18 traffic control plan during the holiday season, as required by the Traffic Mitigate Agreement.

19 29. The Redmond Town Center also has not reached full build-out. The originally
20 approved limit in 1996 on commercial development was 1.375 million square feet, which was
21 increased to 1.49 million square feet in 1998 and then again to its current limit of 1.8 million
22 square feet in 2001. These limits are for commercial uses, not residential, and each of them was
23 accompanied by additional SEPA review. For transportation impacts, they resulted in no
24 additional mitigation under SEPA because they showed no increase in impacts from vehicle trips
25 generated by the Redmond Town Center, and which for parks and open space impacts resulted in
26 the City Council imposing additional park and open space mitigation for the 1998 amendment.

1 30. Even accounting for square footage of the Project, the Redmond Town Center has
2 not yet reached build out.

3 31. With regard to the claim that a Traffic Mitigation Agreement (“Agreement”)
4 between the City and Appellants expired in 2010 and affects the ability of Appellants to obtain
5 the benefit of the SEPA mitigation for transportation impacts, in the first place, the Agreement
6 did not expire in 2010 and still in effect. And while the recitals in the Agreement confirm the
7 parties’ intent that the transportation mitigation was intended to fully mitigate transportation
8 impacts from full build out of the Redmond Town Center development, full build-out in the
9 Agreement is based on 1.375 million square feet of gross leasable area for commercial uses
10 generating 2,363 p.m. peak hour trips, even with the Project, the Redmond Town Center has not
11 reached full build out, even including development of the Project, since (1) the 1.375 million
12 square foot limit was raised to 1.8 million square feet in 2001, (2) the limit is on commercial uses
13 and thus does not apply to the Project, which is for residential use, and (3) the p.m trips
14 generated by development of the Redmond Town, including those generated by the Project, are
15 well below the entitled 2,363 entitle trips for build-out. The Agreement does not affect
16 Appellants’ entitlement to a refund of the Impact Fees.

17 II. CONCLUSIONS

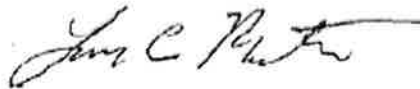
18 1. Based on the above findings of fact, the Hearing Examiner concludes that the
19 City’s imposition of Impact Fees on the project violates RCW 82.02.100(1) and RMC
20 3.10.060(A)(6) because it results duplicative payment for the same system improvements. Thus,
21 Appellants are entitled to a full refund of transportation impact fee in the amount of
22 \$1,229,445.23 and a full refund of the park impact fee in the amount of \$826,492.14.

23 2. Because the issue of compliance with RCW 82.02.100(1) and RMC
24 3.10.060(A)(6) is dispositive, the Hearing Examiner will not address the other claims raised by
25 Appellants.

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Dated this 28rd day of March, 2018.

Davis Wright Tremaine LLP
Attorneys for Appellants



By _____
Larry C. Martin, WSBA #8499
Charles E. Maduell, WSBA #15491

CERTIFICATE OF SERVICE

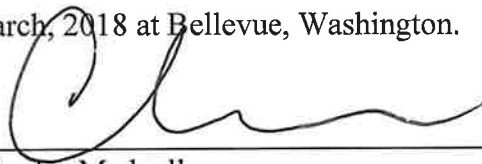
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I hereby certify that I caused the document to which this certificate is attached to be delivered to the following as indicated:

Cheryl D. Xanthos, CMC
Deputy City Clerk
City of Redmond
MS 3NFN
15670 NE 85th St.
Redmond, WA 98052
(425) 556-2191

Messenger
Via Electronic Filing
Federal Express
Facsimile
Email
cdxanthos@redmond.gov

DATED and signed this 28rd day of March, 2018 at Bellevue, Washington.



Charles Maduell