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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.

[PROPOSED] FINDINGS AND CONCLUSIONS

**I. Findings of Fact.**

1. On November 15, 2017 the City of Redmond issued Robert Deane of Encore Architects, representative for RTC 74<sup>th</sup> Street Property, LLC – Appellant in this matter, an invoice for a range of fees required for the RTC Apartments development.
2. The November 15, 2017 invoice included line items of \$826,492.14 for Parks Impact Fees as well as \$1,229,445.23 for Transportation Impact Fees.
3. RTC 74<sup>th</sup> Street Property, LLC paid the Parks and Transportation Impact Fees and received City of Redmond Receipt TRC-08413-11-17-2017. This payment was made under protest.
4. On November 30, 2017 the City of Redmond received an Appeal Application Form from RTC 74<sup>th</sup> Street Property, LLC, G&I VII Redmond Town Center LLC, G&I VII Redmond

1 Retail LLC, and G&I VII Redmond Development LLC, appealing the City of Redmond's  
2 decision to impose impact fees as a condition of obtaining Building Permit BLD-2016-  
3 09558 and claiming that they were entitled to exemptions from, and/or credits against,  
4 transportation and park impact fees.

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6 5. The City of Redmond and Appellants provided pre-hearing briefs, response briefs, and  
7 attended a two-day appeal hearing on this matter.

8 6. The RTC Apartments development is located on a portion of Parcel 5 within the Redmond  
9 Town Center.

10 7. The RTC Apartments development consist of 256 residential apartment units, a parking  
11 structure and related building areas totaling 234,399 SF.

12 8. The RTC Apartments development is within the boundaries of the Redmond Town Center  
13 Master Plan which was approved by the City of Redmond through Ordinance 1841,  
14 effective July 17, 1995.

15 9. The approved Master Plan for the Redmond Town Center is dated July 18, 1995.

16 10. The approved Master Plan explicitly states that “[t]he Conceptual Master Plan consists of  
17 an open-air, mixed-use center of 550,000 to 650,000 sq. ft., and office park of 500,000 to  
18 600,000 sq. ft., and related retail of up to 200,000 sq. ft., for a maximum gross leasable  
19 area of 1,375,000 sq. ft.” and does not include any residential component.

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22 11. Figure 2.2 of the Master Plan identifies the RTC Apartment portion of Parcel 5 as “Surface  
23 Parking Screened with Landscaping.” Figure 2-6 shows the RTC Apartment portion of  
24 Parcel 5 as included within the “Town Center Mixed-Use” overlay. No residential overlay  
25 is identified anywhere in the *Design Area Overlay* figure. Figure 7-1 depicts the Phase I  
26 plan for the RTC Master Plan development and shows the RTC Apartments development

1 portion of Parcel 5 as a parking lot. Figure 7-2 depicts Phases II and III for the RTC Master  
2 Plan development. No change to Parcel 5 is shown in either Phase II or III.

3 12. The Technical Committee’s memo to the Planning commission, dated April 10, 1995,  
4 which dealt with the consideration of the proposed Master Plan, specifically states that  
5 “although a housing element is not analyzed (in the EIS addendum) as part of this proposal,  
6 current zoning regulations allow multiple family development on the site.”  
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8 13. The Planning Commission drafted a similar memo to the Redmond City Council, dated  
9 June 15, 1995, which also does not include any reference to a residential component to the  
10 proposed master plan development.

11 14. The City drafted an EIS Addendum, dated April 11, 1995, in order to add analysis and  
12 information associated with purposed changes to the previously approved but not  
13 constructed Redmond Town Center Development.  
14

15 15. The April 11, 1995 EIS Addendum specifically states that “housing is not an element of  
16 the current proposal.”

17 16. The April 11, 1995 EIS Addendum Table 1 similarly identifies zero residential units as  
18 part of the “present proposal.”

19 17. The April 11, 1995 EIS Addendum Table 1 further states that “Residential is a permitted  
20 use on the site. If is determined that this use should occur in the future, an additional  
21 environmental review may be necessary.”  
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23 18. The April 11, 1995 EIS Addendum Table 3 outlines the three phases of development for  
24 the Redmond Town Center and notes that “the site is proposed to be developed in three  
25 phases over a four-year period beginning in 1995.”  
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- 1 19. The April 11, 1995 EIS Addendum Figure 3A shows the RTC Apartment site as  
2 “RETAIL/OFFICE 2-STORY.”
- 3 20. Attached to the EIS Addendum as Appendix C is the Traffic Impact Analysis Report, dated  
4 April, 1995, which provided the basis for the City’s assessment of traffic impacts and  
5 provided the basis for the Transportation Mitigation Agreement.  
6
- 7 21. The “Trip Generation” section of EIS Addendum Appendix C outlines the proposed land  
8 uses, square footage, and ITE Land Use Codes used in the traffic analysis – none of which  
9 includes residential.
- 10 22. Table 3 of EIS Addendum Appendix C provides a “Trip Generation Summary by Land  
11 Use” and does not analyze any residential component to the Redmond Town Center  
12 Project.  
13
- 14 23. The “Passby and Internal Trips” section of EIS Addendum Appendix C analyzes the passby  
15 trip and internal trips assigned to the proposed development and does not use any  
16 residential use or square footage.
- 17 24. The figures contained in EIS Addendum Appendix A – Master Plan Guidelines and  
18 Standards, dated January 10, 1995, represented outdated information and are superseded  
19 by the conceptual master plan contained in the approved Master Plan for the Redmond  
20 Town Center dated July 18, 1995.  
21
- 22 25. The Year 2010 Pro-Rata Mitigation Table for the Redmond Town Center development  
23 represents those transportation TFP projects impacted by the Master Plan build out through  
24 2010 along with the pro rata share cost attributable to the RTC Master Plan.
- 25 26. The City’s current Transportation Master Plan, adopted May 2013 and updated August  
26 2017, includes the Transportation Facilities Plan for the City of Redmond. This plan

1 includes all transportation projects for the Downtown area that use transportation impact  
2 fees.

3 27. None of those projects included on the Year 2010 Pro-Rate Mitigation Table for the  
4 Redmond Town Center development are listed on the Transportation Facilities Plan for the  
5 City of Redmond included in the City's current Transportation Master Plan, adopted May  
6 2013 and updated August 2017.

7  
8 28. The City of Redmond and Winmar Redmond, Inc. negotiated and agreed to a Transportation  
9 Mitigation Agreement, dated March 8, 1996, regarding the mitigation of transportation  
10 impacts from the construction of mixed use development at RTC.

11 29. The Transportation Mitigation Agreement states that, "It is the intent of the City and TCA  
12 that this Agreement shall fully satisfy the requirement that a traffic impact mitigation  
13 agreement be entered into. It is also intended that fulfillment by TCA of the requirements  
14 of this Agreement shall constitute complete satisfaction of all City requirements upon  
15 Redmond Town Center, including all future phases of Redmond Town Center through the  
16 year 2010 consistent with the Redmond Town Center Master Plan and the approval for File  
17 95-014, insofar as such requirements are related to mitigation of impacts upon  
18 transportation facilities."

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20 30. Mr. Don Cairns provided credible testimony at the appeal hearing that the City negotiated  
21 the inclusion of the 2010 horizon because the City was creating transportation impact fees  
22 at the same time and it wanted to be able to use those impact fees at some point in the  
23 future. The City did not want to negotiate away its right to impose impact fees in perpetuity  
24 so it agreed that TCA could rely on satisfaction of the mitigation agreement terms through  
25 2010.  
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1 31. Mr. Cairns provided further credible testimony at the appeal hearing that the developer  
2 negotiated this term in order to give a sufficient window for completion of all three phases  
3 of the Redmond Town Center without having to pay additional impact fees.

4 32. In 2001 the City received a request from the Macerich Company, owners of Redmond  
5 Town Center, to amend the Comprehensive Plan policies and associated development  
6 regulations for the Mixed use/Shopping Center district. This applicant requested and the  
7 City Council approved an amendment that would remove the existing limit on gross  
8 commercial leasable area and designate the Town Center as a receiving area for TDR's.  
9 The request did not relate to development of residential units.

10 33. The April 11, 1995 EIS Addendum includes environmental analysis for Recreation and  
11 Open Space mitigation and requires "approximately 46 acres will be held in a conservation  
12 easement or conveyance acceptable to the City for public access and passive recreational  
13 use" as a mitigation measure.

14 34. The SEPA mitigation in 1995 was designed to retain acreage as mitigation to reduce  
15 environmental impacts to aesthetics and natural resource protection and the loss of open  
16 space.

17 35. The mitigation imposed upon the Redmond Town Center did not address new or increased  
18 demand to parks and recreational facilities resulting from residential development.

19 36. In 1995 the City's Draft Comprehensive Plan does not contain a quantitative goal or policy  
20 for open space within the City Center. There is, therefore, no objective standard against  
21 which to measure the proposed reduction. However, the City did have an open space  
22 standard based on residential, which corresponds to residential development.  
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1 37. In assessing open space impacts for the Redmond Town Center, the City did not use the  
2 open space standard for residential, because there was not residential component to the  
3 project.

4 38. Park impact fees, as they are currently assessed, go to fund those projects listed in the  
5 PARCC Plan which contains the current Capital Improvement Projects list for the City.  
6

7 39. None of the projects funded by the current parks impact fees, which are included on the  
8 PARCC Plan are the same as the mitigation required in 1995 for the Redmond Town  
9 Center.

## 10 **II. Conclusions of Law.**

11 1. The Redmond Hearing Examiner has the jurisdiction to act as the appellate body which  
12 conducts an open record appeal hearing when decisions of the department director (Type  
13 I) are appealed. RZC 21.76.060(I)(1); RZC 21.76.050.C (Table B).  
14

15 2. The decision of the department director is given substantial weight. Redmond Zoning  
16 Code (RZC) 21.76.060(I)(4)

17 3. The appellant must carry its burden and prove that the decision is not supported by a  
18 preponderance of the evidence or was clearly erroneous before the Hearing Examiner can  
19 grant or grant with modifications the request. RZC 21.76.060(I)(4)  
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21 4. Concurrent with the outlined burden on Appellants, RCW 82.02.070(5) provides that  
22 adjustments to impact fees should take into account principles of fairness.

23 5. Pursuant to the requirements of RMC 3.10.140(A), Appellants properly filed their appeal  
24 of both transportation and parks impact fees imposed by the City of Redmond on their  
25 project, the RTC Apartments development, which were imposed as a condition of obtaining  
26 Building Permit BLD-2016-09558 (Type I decision). *See* Table 21.76.050B.

- 1 6. Appellants in this matter timely filed their appeal within the time limits prescribed by RZC  
2 21.76.060(I)(2)(c).
- 3 7. The purpose of impact fees is to implement the Capital Facilities Element of the Redmond  
4 Comprehensive Plan and the Growth Management Act by ensuring adequate park and  
5 transportation facilities are available to serve new development. RMC 3.10.010. Any  
6 person who applies for a permit to undertake any development activity as defined in the  
7 Redmond Zoning Code shall pay park and transportation impact fees. RMC 3.10.050. The  
8 City's impact fee provisions conform to the State requirements outlined in RCW 82.02.050.
- 9 8. Impact fees may be paid under protest to obtain a building permit or other approval or  
10 permit. RMC 3.10.140(B). RTC 74<sup>th</sup> Street Property, LLC paid all invoiced impact fees  
11 under protest.
- 12 9. The legislature sought "ensure that impact fees are imposed through established procedures  
13 and criteria so that specific developments do not pay arbitrary fees or duplicative fees for  
14 the same impact." RCW 82.02.050(1)(c).
- 15 10. RCW 82.02.050(4) and (5) provide the framework for impact fees. Impact fees shall only  
16 be imposed for system improvements that are reasonably related to the new development,  
17 shall not exceed a proportionate share of the costs of system improvements that are  
18 reasonably related to the new development, and shall be used for system improvements  
19 that will reasonably benefit the new development.
- 20 11. Where a fee has previously been paid for the development activity under the State  
21 Environmental Policy Act (SEPA) for all of the system improvements for which impact  
22 fees are imposed by this chapter, the development activity shall be exempt from the  
23 payment of all impact fees pursuant to RCW 82.02.100. Where a fee previously paid for  
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1 the development activity under SEPA does not cover all system improvements for which  
2 an impact fee is imposed under this chapter, an impact fee credit shall be given to ensure  
3 that the City is not collecting both SEPA and impact fees for the same system  
4 improvements. RMC 3.10.060(A)(6).

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6 12. RCW 82.02.100(1) matches this requirement: “A person required to pay a fee pursuant to  
7 RCW 43.21C.060 [SEPA mitigation of environmental impacts] for system improvements  
8 shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 [impact  
9 fees] for those system improvements.”

10 13. The City of Redmond’s approval of the Redmond Town Center Master Plan did not include  
11 environmental analysis or approval of any specific residential development component.  
12 Therefore, the RTC Apartments development is a new project and is not the same project  
13 upon which pro rata traffic mitigation and open space mitigation were imposed in  
14 connection with the 1995 Town Center Master Plan.

15  
16 14. The Redmond Town Center Master Plan analysis and approval did not account for every  
17 potential permitted land use and only analyzed and approved those land uses described in  
18 the proposed project.

19 15. In 2001 the City of Redmond considered and then approved an applicant requested  
20 amendment which removed the existing limit on gross commercial leasable area and  
21 designated the Town Center as a receiving area for TDR’s. Because the request before the  
22 City at that time did not include any residential development, the City’s decision did not  
23 make any decisions related to residential.  
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1 16. "System Improvements" are defined as public facilities that are included in the capital  
2 facilities plan and are designed to provide service to service areas within the community at  
3 large, in contrast to project improvements. RCW 82.02.090(9).

4 17. The definition of "system improvements" is clear and unambiguous and means public  
5 facilities included on the capital facilities plan.

6 18. The term "system improvements" does not mean general categories of improvements.

7 19. The transportation pro rata fees previously paid by the Redmond Town Center developer,  
8 including the construction of improvements and credits towards those fees, do not address  
9 the same system improvements as those that will benefit from the current impact fees  
10 imposed upon the RTC Apartments Development. Therefore, RTC Apartments is not  
11 entitled to an exemption from the requirement to pay transportation impact fees.  
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13 20. The SEPA mitigation for open space required of the Redmond Town Center Developer,  
14 including the requirement to set aside open space and construct trails, do not address the  
15 same system improvements as those that will benefit from the current parks impact fees  
16 imposed upon the RTC Apartments Development. Therefore, RTC Apartments is not  
17 entitled to an exemption for the requirement to pay parks impact fees.  
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19 21. The Redmond Town Center Apartments are not entitled to any credits beyond those already  
20 granted to the Redmond Town Center for improvements made at the time mitigation was  
21 originally required.

22 22. The plain language of the Transportation Mitigation Agreement states the intention of the  
23 parties:  
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25 It is the intent of the City and TCA that this Agreement shall fully satisfy the requirement  
26 that a traffic impact mitigation agreement be entered into. It is also intended that fulfillment  
by TCA of the requirements of this Agreement shall constitute complete satisfaction of all

1 City requirements upon Redmond Town Center, including all future phases of Redmond  
2 Town Center through the year 2010 consistent with the Redmond Town Center Master  
3 Plan and the approval for File 95-014, insofar as such requirements are related to mitigation  
4 of impacts upon transportation facilities.

5 This clear language, coupled with the credible testimony of Mr. Cairns, establishes that the  
6 parties intentionally included the 2010 horizon. Because the language contained in this  
7 clause clearly shows the intention of the parties, which is consistent with the credible  
8 testimony of Mr. Cairns, the Hearing Examiner will not read the 2010 horizon out of the  
9 agreement. Fulfillment by TCA of the requirements of this Agreement shall constitute  
10 complete satisfaction of all City requirements upon Redmond Town Center, including all  
11 future phases of Redmond Town Center through the year 2010.

12 23. The impacts associated with transportation at the time of the Redmond Town Center Master  
13 Plan revolved entirely around vehicle trips. Transportation impacts under the City's  
14 current analysis and impact fee structure revolve around person-miles-traveled in a multi-  
15 modal system. Because the systems are structurally different (pro-rata share compared to  
16 impact fees) and service different needs (vehicle trips compared to person-miles-traveled  
17 in a multi-modal system), there is no straight trip credit that could be effectuated.

18 24. The impacts associated with parks and open space for the Redmond Town Center Master  
19 Plan sought to defray environmental impacts to aesthetics and natural resource protection.  
20 The Redmond Town Center Development caused a large reduction in open space (the golf  
21 course) that the City sought to address. The open space mitigation requirements placed on  
22 the Redmond Town Center Master Plan were not designed to address the increase demands  
23 that would be placed on the City's parks and recreations facilities by residential  
24 development. Further, had the City intended to use the open space mitigation as a tool to  
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1 address new residential development, there was a quantitative calculation that could have  
2 been used, but was not.

3 25. It would be unfair and unjust for the RTC Apartments development to rely upon the RTC  
4 Master Plan from 22 years earlier to avoid paying transportation and parks impact fees.  
5 The evidence shows that the City never considered residential development as a component  
6 of the RTC Master Plan and none of the mitigation or pro-rata fees were intended to address  
7 any impacts from residential development. Every other development going into the City  
8 of Redmond must comply with all applicable impact fees and the RTC Apartments should  
9 as well.  
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11 26. Because the RTC Apartments development was not an element of the Redmond Town  
12 Center Master Plan when it was analyzed and approved by the City, and because none of  
13 the transportation or parks mitigation required of the Redmond Town Center developer  
14 pertained to residential development, it is fair and just for the City to require payment of  
15 transportation and parks impact fees by the RTC Apartments development.  
16

17 **DECISION**

18 For all of the reasons set forth above, the Appellants’ challenge to the decision of the City  
19 of Redmond to impose transportation and parks impact fees on the RTC Apartments development  
20 is DENIED. The City imposed transportation and parks impact fees remain in place.  
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22 Ordered: \_\_\_\_\_  
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Sharon A. Rice  
Redmond Hearing Examiner