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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.

CITY OF REDMOND PRE-HEARING  
BRIEF

**I. INTRODUCTION**

This appeal centers around the City of Redmond’s imposition of traffic and park impact fees on the RTC Apartments development. Appellants contend that either an exemption or credits should be applied to the impact fees currently required by the City as a result of improvements constructed in the 1990’s for the Redmond Town Center Master Plan build-out. However, because the construction of residential at the RTC site was not envisioned in any of the Master Plan build-out scenarios and, consequently, was not accounted for in any of the impact analysis, no credits can be applied now. Further, none of the impact fees being imposed now relate in any way to the system improvements made 22 years ago. The impact fees today were properly imposed by the City and should remain in place.

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## II. FACTS

The facts surrounding this appeal span back over 30 years and are quite extensive depending on the direction of the analysis taken. The City's staff report, incorporated herein by reference, will detail the relevant facts in more detail. However, a short summary is included here.

Beginning in the mid-1980's, the City of Redmond engaged in discussions regarding the annexation of property for the purpose of creating a shopping mall. The plans for that property, which was an old golf course, would evolve and stall over time. When the project actually came to fruition, the project was called the Redmond Town Center and its Master Plan was originally approved in 1995. *See* City's Exhibits 6 and 11. The RTC Master Plan describes the project as a mixed-use development consisting of "an open-air, mixed-use center of 550,000 to 650,000 sq. ft., and office park of 500,000 to 600,000 sq. ft., and related retail of up to 200,000 sq. ft., for a maximum gross leasable area of 1,375,000 sq. ft." City Exhibit 6, p.6 of PDF. The developer and City completed environmental review and analyzed traffic impacts for the proposed full build out of the RTC development. As a result, the RTC was required to comply with the terms of a Traffic Mitigation Agreement and other SEPA required mitigation. The RTC continued to be developed and all required mitigation was fulfilled.

Now, 22 years later, the RTC Apartments seeks permitting to develop a mixed-use apartment building on one of the parking lots of the Redmond Town Center. Just as with any other development in the City, the RTC Apartments development triggered impact fees under the Redmond Municipal Code. Before those impact fees became due, RTC 74<sup>th</sup> Street Properties claimed that it is entitled to impact fee credits for the improvements the original RTC developer constructed in the mid 1990's. The City of Redmond disagreed with that position and invoiced

1 RTC 74<sup>th</sup> Street Properties for the full amount of impact fees owed for the development. RTC 74<sup>th</sup>  
2 Street Properties paid the impact fees under protest and proceeded to file this appeal.

### 3 III. LAW AND ANALYSIS

4 The imposition of impact fees, such as those at issue in this appeal, may be appealed in  
5 accordance with the procedures for appealing the underlying permit and shall not be subject to a  
6 separate appeal process. Redmond Municipal Code (RMC) 3.10.140(A).

7  
8 The Hearing Examiner shall accord *substantial weight* to the decision of the department  
9 director. Redmond Zoning Code (RZC) 21.76.060(I)(4) (Emphasis added). The appellant must  
10 carry its burden and prove that the decision is not supported by a preponderance of the evidence  
11 or was clearly erroneous before the Hearing Examiner can grant or grant with modifications the  
12 request. *Id.* Concurrent with the outlined burden on Appellants, RCW 82.02.070(5) provides that  
13 adjustments to impact fees should take into account principles of fairness. Appellants will be  
14 unable to carry their burden and prove that the City's decision to impose impact fees without  
15 exemption or credits being applied was not supported by a preponderance of the evidence or was  
16 clearly erroneous and likewise will not be able to establish that it is unfair that they pay impact  
17 fees.  
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#### 19 A. Statutory and Municipal Code Authority to Impose Impact Fees

20 Impact fees are generally governed by RMC Chapter 3.10 and RCW 82.02. Impact fees  
21 were first implemented by the City through Ordinance 1913 in November of 1996, which is  
22 subsequent to the RTC Master Plan and its associated Traffic Mitigation Agreement. City Exhibit  
23 14.  
24

25 RMC Chapter 3.10 authorizes the imposition of impact fees for both transportation and  
26 parks, which are the two impacts fees at issue in this appeal. The purpose of impact fees is to

1 implement the Capital Facilities Element of the Redmond Comprehensive Plan and the Growth  
2 Management Act by ensuring adequate park and transportation facilities are available to serve new  
3 development. RMC 3.10.010. Any person who applies for a permit to undertake any development  
4 activity as defined in the Redmond Zoning Code shall pay park and transportation impact fees.  
5 RMC 3.10.050. The City's impact fee provisions conform to the State requirements outlined in  
6 RCW 82.02.050.  
7

8 RCW 82.02 explains that the legislature's intent was to "ensure that impact fees are  
9 imposed through established procedures and criteria so that specific developments do not pay  
10 arbitrary fees or duplicative fees for the same impact." RCW 82.02.050(1)(c). Further, impact  
11 fees must only be imposed for system improvements<sup>1</sup> that are reasonably related to the new  
12 development. RCW 82.02.050 (4)(a). In fact, impact fees can only be spent by the City on the  
13 capital facilities projects addressed by the capital facilities plan element of the comprehensive land  
14 use plan. RCW 82.02.050(5)(a). Specifically, transportation impact fees are used to fund a portion  
15 of the Transportation Facility Plan (TFP). RMC 3.10.100(A)  
16

17 The Redmond Impact Fee Schedules used on the Redmond Town Center Apartments can  
18 be found at RMC 3.10.080 - .100. It is uncontested that the City of Redmond has the base-line  
19 authority to impose impact fees upon the RTC Apartment development.  
20

## 21 **B. Impact Fee Exemptions, Credits, and Adjustments**

### 22 *1. Impact Fee Exemption*

23 Appellants argue that "the City erred in its Decision by failing to exempt the Redmond  
24 Town Center Apartments Project from its transportation impact fee, and/or by failing to provide  
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26 <sup>1</sup> "System Improvements" are defined as public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

1 credits in reduction of the transportation impact fee.” Appeal, Attachment A, p.3. Appellants  
2 similarly argue that an exemption and/or credits should have been granted for the parks and open  
3 space impact fees. *See* Appeal, Attachment A, p.2.

4 The RMC provides limited exemptions to the requirement to pay impact fees. One such  
5 exemption, identified by Appellants as the basis for this point on appeal, states that:  
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7 “[w]here a fee has previously been paid for the development activity under the State  
8 Environmental Policy Act (SEPA) for all of the system improvements for which  
9 impact fees are imposed by this chapter, the development activity shall be exempt  
10 from the payment of all impact fees pursuant to RCW 82.02.100. Where a fee  
11 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 ensure that the City is not collecting both SEPA and impact  
fees for the same system improvements.”

12 RMC 3.10.060(A)(6). RCW 82.02.100(1) matches this requirement: “A person required to pay  
13 a fee pursuant to RCW 43.21C.060 [SEPA mitigation of environmental impacts] for system  
14 improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090  
15 [impact fees] for those system improvements.”

16 The core of this exemption is that the City cannot sequentially impose both SEPA  
17 mitigation fees and impact fees for the benefit of the same “system improvements.” This is the  
18 “double dipping” that Appellants argue is occurring here. No such “double dipping” exists because  
19 the “system improvements” involved in 1995 SEPA mitigation are entirely different than those at  
20 issue now.  
21

22 “System Improvements” are defined as public facilities that are included in the  
23 capital facilities plan and are designed to provide service to service areas within the community at  
24 large, in contrast to project improvements. RCW 82.02.090(9). The system improvements  
25 identified on the City’s capital facilities plan in 1995 when the SEPA mitigation was required for  
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1 the RTC Master Plan are not the same as the system improvements that are identified in the City's  
2 current TFP projects and programs (City's Exhibit 24) for which the current impact fees are  
3 imposed. Because the system improvements at the time the Master Plan SEPA mitigation was  
4 required and when the current impact fees were imposed are entirely different, this exemption does  
5 not apply. *See United Dev. Corp. v. City of Mill Creek*, 106 Wn. App 681, 689, 26 P.3d 943 (2001)  
6 (The Court held that there was no duplicative traffic mitigation where the initial agreement and  
7 subsequent mitigation fees addressed different sets of street improvements.) It is impossible to  
8 double dip when the "system improvements" listed in the capital facilities plans at the time each  
9 of the two fees were imposed are entirely different. The second fee goes to an entirely different  
10 set of projects.  
11

12           It is important to note that there is a 22-year gap between the SEPA mitigation imposed in  
13 1995 and the impact fees imposed in 2017. The City of Redmond has changed significantly, as  
14 has its Transportation Facilities Plan and listed system improvements. Because the Appellants are  
15 not being charged for the same system improvements that they were charged for or constructed in  
16 the 1990's, Appellants do not qualify for an exemption under RMC 3.10.060(A)(6) and RCW  
17 82.02.100(1).  
18

## 19           2. *Impact Fee Credits*

20           A project that is not exempt may also receive credits pursuant to RMC 3.10.130, also cited  
21 by Appellants as a basis for this point on appeal. RMC 3.10.060(B). A credit may be available to  
22 a developer if the development approval is conditioned upon the developer's conveyance of land  
23 and/or construction of specified system improvements. RMC 3.10.130(A)(1). In those  
24 circumstances the developer shall be entitled to a credit against the impact fee that would be  
25 imposed for the value of the land and/or the actual cost of construction. *Id.* No credits are given  
26

1 for project improvements or land devoted to project improvements. RMC 3.10.130(A)(1)(c); *See*  
2 also RCW 82.02.060(4).

3 Under the terms of these provisions, credits are only available when a development  
4 approval is conditioned upon the developer's conveyance of land for and/or construction of  
5 specified system improvements. Importantly, the City did not condition the approval of the RTC  
6 Apartments upon the construction of any improvements. Therefore, no credits are allowed. The  
7 only way credits would flow to the current RTC Apartment developer is if every element of the  
8 credits code provision is contorted to their needs - the development approval that is conditioned  
9 upon construction of improvements must be viewed as the 1995 Master Plan approval rather than  
10 the current RTC Apartment approval; the Master Plan developer who constructed the  
11 improvements in the 1990's and the current developer who is paying the impact fee imposed in  
12 2017 must be viewed as one in the same; and the system improvements constructed 22 years ago  
13 must still be considered system improvements today. None of these are true and no credit should  
14 be granted.  
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17 To the extent that a credit would be available under these provisions, that credit was already  
18 allocated to the original developer. The original developer of the RTC was permitted to construct  
19 improvements rather than pay SEPA mitigation fees (note that impact fees were not in place at the  
20 time the RTC Master Plan was approved and mitigation was required). The developer received  
21 credit for those improvements and consequently paid fewer mitigation related fees under the  
22 system that was in place at that time. To allow Appellants to claim those same credits again now  
23 would be a second allocation of credit for those original system improvements. These provisions  
24 are not written such that every future development continually gets credit for the original  
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1 improvements. Once credits are given to reduce fees due to the construction of system  
2 improvements, credits are no longer available.

3 Further, the City's impact fee structure today funds the City's current TFP projects and/or  
4 programs (See City's Exhibit 24). None of the current TFP projects or programs are the same as  
5 any of those improvements constructed by the original RTC developer 22 years ago. In order to  
6 receive a credit that would reduce the impact fees owed for the RTC Apartments development, the  
7 system improvements from 22 years ago must be the same as the current TFP projects or programs.

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9 *3. Impact Fee Credits for Parks and Open Space.*

10 A project may also receive credit for park and open space facilities in certain limited  
11 circumstances. RMC 3.10.130(A)(2).

12 If a development activity includes park, recreation, open space or trail facilities which meet  
13 the requirements of 3.10.130(A)(2), then the applicant shall be entitled to a credit for that portion  
14 of the impact fee to be used for that facility type to the extent that the park, recreation, open space  
15 or trail system satisfies the needs of the occupants of the development activity or the public.

16 Appellants cannot meet this test for two reasons. First, the impact fees imposed upon the  
17 RTC Apartments will not be used by the City for the type of facility (open space) initially retained  
18 by the original RTC developer. The SEPA mitigation for the original RTC Master Plan required  
19 the developer to retain 44 acres as mitigation to adverse environmental impacts. Nearly all of the  
20 44 acres is encumbered by critical area and was not considered developable at the time it was  
21 retained. The exception is parcel 11A which is currently owned by RTC and is undevelopable and  
22 is the location of RTC's private storm drainage ponds for the entire development. Currently,  
23 except for some residential zones, no open space calculations are permitted to include non-usable  
24 or critical areas as part of a development's open space calculations. Therefore, the current parks  
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1 impact fee would never be used on the same type of facility - non-usable and critical areas -  
2 originally retained by the RTC developer.

3         The only type of facility that the current park impact fees would go towards that is similar  
4 to the land retained by the original developer would be a “resource park,” which are natural areas  
5 under City ownership that will not be developed for active recreation use. However, the City met  
6 the former level of service goals (2.5 acres per 1,000 residents) for resource parks prior to the RTC  
7 Master Plan adoption in 1995. Because the standard for resource parks has long been met, the  
8 current park impact fees will not be used for the same type of facility as the retained acreage.

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10         Second, the acres retained by the original RTC developer never did, nor do they now,  
11 satisfy the park related needs of the occupants of the development or the public. As noted above,  
12 the retained acres were required to mitigate the adverse environmental impacts of the RTC Master  
13 Plan development. They were not retained to address the development’s demands on the City’s  
14 park services. The current mixed-use apartment development places an intense additional demand  
15 on City public services that are calculated and mitigated through impacts fees which support  
16 adopted system improvements that are not addressed by the 40+ acres of critical area/open space.

17  
18         Consequently, RTC Apartments are not entitled to park impact fee credits.

19         4. *Impact Fee Adjustments*

20         Pursuant to RMC 3.10.130(B), the Administrator may adjust the required impact fees  
21 where the Administrator determines that either the fee was incorrectly computed or due to unusual  
22 circumstances the standard fee is unfair or unjust. See RMC 3.10.130(B)(1) and (2). RMC  
23 3.10.130(B) does not require the Administrator to apply any adjustment; adjustments are purely  
24 permissive in nature. Without any requirement to impose an adjustment, no adjustment can be  
25 dictated as a result of this appeal.  
26

1 Even if the City could be required to make an adjustment, Appellants cannot establish that  
2 the impact fees were incorrectly computed. The only argument Appellants have put forward is  
3 that they are entitled to an exemption and/or credits, not that the total baseline impact fee amount  
4 was calculated inaccurately.

5 Further, “unusual circumstances” as defined in the ordinance are not circumstances  
6 generally applicable to similar types of land uses or generally applicable to development activities  
7 in the vicinity. RMC 3.10.130(B). Unusual circumstances may include that the development  
8 activity will have less impact on the system improvement(s) for which the impact fee is imposed  
9 than the other development activities in the same category. *Id.* Appellants do not argue that the  
10 RTC Apartment development will have less impacts on the system improvements for which the  
11 current impact fees are being imposed. Their argument is entirely different; they argue that an  
12 outdated set of system improvements from 22 years ago provide the basis for their “unique  
13 circumstances” and adjustment. But, the system improvements constructed in the 1990’s were  
14 (1) constructed to offset SEPA impacts of the Master Plan, which did not include this residential  
15 development (see below), (2) constructed, at least in part, as SEPA traffic mitigation pursuant to a  
16 now expired Traffic Mitigation Agreement, and (3) the retention of open space was not intended  
17 to address the Master Plan development’s (let alone this residential development’s) impacts to park  
18 facilities, but was instead required to mitigate adverse environmental impacts. There is no  
19 connection between the outdated improvements made in the 1990’s and the required current impact  
20 fees.  
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24 The standard impact fee assessment is both fair and just. First, the impact fees imposed  
25 upon the RTC Apartments development are used to address current demands and impacts to  
26 facilities, something that was not (and could not have been) considered or addressed in 1995.

1 Because this residential development's impacts to parks and transportation systems were not  
2 analyzed or accounted for in the mitigation from the 1990's, it is entirely fair and just to require  
3 payment of impact fees now. Further, the system improvements that the current impact fees are  
4 used to support are different than those at play in the 1990's. The RTC Apartment impact fees  
5 will go to fund system improvements clearly outlined by the City's current capital facilities plan  
6 and TFP, which list projects that do not overlap with those from the 1990's. Finally, it is entirely  
7 fair and just to require this development to pay impact fees just as every other current development  
8 must do. Every development pays impact fees to address the impacts to parks and transportation  
9 facilities caused by that development. If RTC Apartments were given credits or adjustments due  
10 to severely outdated and unconnected improvements from 1995, none of the actual current impacts  
11 caused by the RTC Apartments development would be addressed. This puts an increased burden  
12 on those developments that do pay impact fees now and leaves the city with an increased demand  
13 and shortfall in fees collected.

16 **C. Residential Development was Never Contemplated in the Master Plan.**

17 Appellants incorrectly assert that the "Redmond Town Center Apartments is a phase of  
18 development of the Redmond Town Center Master Plan." Appeal, Attachment A, p.3. This  
19 flawed position is the foundation of Appellants' argument. Appellants cannot point to anything in  
20 the Master Plan to support this assertion. The Master Plan itself (*See* City Exhibit 6) states that  
21 the mixed-use development consists of "an open-air, mixed-use center of 550,000 to 650,000 sq.  
22 ft., and office park of 500,000 to 600,000 sq. ft., and related retail of up to 200,000 sq. ft., for a  
23 maximum gross leasable area of 1,375,000 sq. ft." City Exhibit 6, p.6 of PDF. The Master Plan  
24 was approved by the Ordinance No 1841 (City Exhibit 11) on July 17, 1995. On July 21, 1998,  
25 Ordinance No. 1992 (City Exhibit 28) amended the RTC maximum commercial gross leasable  
26

1 area up to 1.49 million square feet with certain conditions. Then, on October 16, 2001 Ordinance  
2 No. 2114 (City Exhibit 34) stated that the RTC gross leasable area may be increased to a limit of  
3 1.8 million square feet through the acquisition and use of TDRs for a full-service hotel/conference  
4 Center. The Master Plan build-out is never described or analyzed as including a defined residential  
5 component. The illustrative Plan (City Exhibit 6, Figure 2.1 on p.8 of PDF) clearly shows the  
6 conceptual build out of the master plan with the current project site as a parking lot. Further,  
7 Phases I through III of the project are depicted on Figures 7-1 and 7-2 (City Exhibit 6, ps. 63-64  
8 of PDF). Phases I through III do not include any residential build-out at the current project site  
9 (or anywhere else); the current project site is a parking lot. The Master Plan is never described,  
10 analyzed, or approved with any residential in the build-out.  
11

12           The only mention of residential is in the context of a potential use allowed by the zoning.  
13 The Master Plan states that “the proposed master plan facilitates fine tuning to adjust to market  
14 shifts in the future by creating eight developable city blocks whose dimensions are adaptable to  
15 the wide variety of potential uses for which the property is zoned.” See City Exhibit 6, p.6 of PDF.  
16 This shows an intention to zone the property in a manner that could allow development in the  
17 future that may include a range of potential uses. Residential is one of the potential uses that could  
18 be allowed by the zoning and is identified as encouraged in the Mixed-Use Design Area. *Id.* While  
19 the site plan included areas zoned such that residential could be implemented, the Master Plan  
20 itself did not envision any residential as part of the Master Plan buildout as clearly shown through  
21 every summary of the Master Plan build-out phases I through III – a very important distinction.  
22 To claim that this specific apartment project is actually a phase of the Master Plan (as claimed by  
23 Appellants) simply due to the underlying zoning allowance is to say that anything that complies  
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1 with the underlying zoning at any time in the future is a phase of the Master Plan buildout. This  
2 proposition is a far overreach of what the Master Plan was intended to capture.

3         Second, the traffic impact analysis (*See* City Exhibit 5) analyzed a buildout consistent with  
4 that which is outlined in the Master Plan. “The proposed Master Plan (1,375,000 sf) conceives a  
5 flexible mixed-use project with three major components – a mixed-use center (601,000 sf of retail  
6 including a hotel and cinema, 144,000 sf of office), an office park (430,000 sf), and 200,000 sf of  
7 other retail (Butler Walls).” City exhibit 5, p.15 of PDF. The alternative scenario similarly did  
8 not include residential in the analyzed buildout. This clearly shows that, consistent with the Master  
9 Plan, the traffic analysis did not account for any residential. *Id.* The trip generation rates used in  
10 the proposed Master Plan build out traffic analysis included ITE Land Use Code (LUC) 820 –  
11 Shopping Center, and LUC 710 – General Office Building but no residential. *Id.* The Trip  
12 Generation Summary by Land Use table (Table 3 – City Exhibit 5, p.16 of PDF) outlines the land  
13 uses utilized in the traffic analysis, none of which is residential as well. The traffic impact analysis  
14 did not analyze any residential component to the potential Master Plan buildout.  
15

16         Third, consistent with the Master Plan and the traffic impact analysis, the Traffic Mitigation  
17 Agreement dated March 1996 specifically defers to the master plan for the complete project scope  
18 and then calls out “a full build out condition with 1,375,000 square feet of gross leasable area of  
19 commercial uses...” City Exhibit 3, p.1. The Traffic Mitigation Agreement is the defining  
20 document that outlines all the required traffic mitigation for full build out of the Master Plan.  
21 There was no traffic analysis for, or consideration given to, any residential component to the  
22 Master Plan.  
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1 Appellants' claim that the RTC Apartments project is, in fact, a phase of development of  
2 Master Plan is without merit and contrary to the explicit language of the Master Plan and its  
3 associated documents.

4 **D. Traffic Mitigation Agreement Expired.**

5 The 1996 Traffic Mitigation Agreement (City Exhibit 3) documents the mitigation required  
6 of TCA (the original RTC Developer) to mitigate the impacts to the transportation system resulting  
7 from the full build out of the RTC Master Plan. As noted above, the Traffic Mitigation Agreement  
8 analyzed the buildout described in the Master Plan and associated traffic report, which the Traffic  
9 Mitigation Agreement describes as "full build out." None of those documents include any  
10 residential development in their analysis of traffic impacts.  
11

12 The Traffic Mitigation Agreement looked as far out as 2010 for its long-term transportation  
13 network and long-term road improvements. This accounts for a 15-year analysis of traffic impacts  
14 from the 1995 EIS Addendum, Appendix C Traffic Impact Analysis Report. The Traffic  
15 Mitigation Agreement also explicitly creates an expiration date of 2010 which matches the extent  
16 of the long-term analysis. The agreement states that:  
17

18 "It is the intent of the City and TCA that this agreement shall satisfy the requirement  
19 that a traffic impact mitigation agreement is entered into. It is also intended that  
20 fulfillment by TCA of the requirements of this Agreement shall constitute complete  
21 satisfaction of all City requirements upon Redmond Town Center, including all  
22 future phases of Redmond Town Center through the year 2010 consistent with the  
23 Redmond Town Center Master Plan and the approval for File No. 95-014, insofar as  
24 such requirements are related to mitigation of impacts upon transportation  
25 facilities."  
26

City Exhibit 3, p.2. The Traffic Mitigation Agreement clearly states that compliance with the  
terms of the Mitigation Agreement constitutes satisfaction of requirements for the RTC and all  
future phases through 2010. The agreement, signed by both parties, acknowledges that the City

1 will not recognize fulfillment of the listed requirements as satisfying required mitigation for any  
2 buildout after 2010. The RTC Apartments development is seven years after the expiration of the  
3 mitigation agreement and must pay all appropriate impact fees for transportation. There is no way  
4 the RTC traffic report could have envisioned in its analysis that a residential development, which  
5 was not included in the Master Plan or future buildout scenario, would be constructed 22 years  
6 later and certainly could not have properly analyzed the traffic impacts that might flow from that  
7 unknown future scenario.

9 **IV. CONCLUSION**

10 Appellants cannot carry their burden and prove that the City's decision to impose impact  
11 fees without exemption or credits being applied was not supported by a preponderance of the  
12 evidence or was clearly erroneous and likewise will not be able to establish that it is unfair that  
13 they pay impact fees. Accordingly, the City imposed impact fees should remain in place and this  
14 appeal should be denied.

15 DATED this 5th day of February, 2018.

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18 OGDEN MURPHY WALLACE, PLLC

19 By 

20 James E. Haney, WSBA #11058  
21 Daniel P. Kenny, WSBA #44547  
22 Attorneys for City of Redmond  
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