



## APPEAL APPLICATION FORM

To file an appeal of a Type I or II decision or a SEPA determination, please complete the attached form and pay the applicable fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by **PERSONAL DELIVERY** at City Hall 1<sup>st</sup> Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85<sup>th</sup> Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

### Standing to Appeal:

- **Appeal to the Hearing Examiner of a SEPA determination** - Any interested person may appeal a threshold determination, adequacy of a final EIS, and the conditions or denials of a requested action made by a nonelected City official based on SEPA. No other SEPA appeals shall be allowed.
- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. on the 14<sup>th</sup> calendar day following the date of the decision.

Should the appellant prevail in the appeal, the application fee will be refunded (City of Redmond Resolution No. 1459). The application fee will not be refunded for appeals that are withdrawn or dismissed.

Hearing Examiner or City Council decision may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

**Please continue to page 2 to select your appeal type.**

(Staff Use Only)	<p>RECEIVED CITY OF REDMOND AUG 22 2018 OFFICE OF THE HEARING EXAMINER</p>
File No: _____	
Date Received: _____	
Receipt No. _____	

**Please check the applicable appeal:**

- Appeal to the Hearing Examiner of a SEPA determination *RZC 21.70.190(E)*. *(Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)*
- Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) *RZC 21.76.060(I)*

**Section A. General Information**

Name of Appellant: Abbey Road HOA; Neil Barnett; Manaji Suzuki; John Stilin; Sherry Stilin  
Address: c/o Jacob Brooks & Claudia Newman, Bricklin & Newman, LLP, 1424 Fourth Avenue, Suite 500  
City: Seattle State: WA Zip: 98101  
Email: brooks@bnd-law.com; newman@bnd-law.com; cahill@bnd-law.com  
Phone: (home) \_\_\_\_\_ (work) 206-264-8600 (cell) \_\_\_\_\_

Name of project that is being appealed: Emerald Heights-Assisted Living & Independent Living Building  
File number of project that is being appealed: SEPA-2018-00640  
Date of decision on project that is being appealed: July 26, 2018  
Expiration date of appeal period: 8/23/2018

What is your relationship to the project?

- Party of Record     Project Applicant     Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

All named parties submitted timely written comments regarding the DNS issued for file number SEPA-2018-00640 on August 9, 2018 (attached). The named parties are parties of record and, therefore, have standing to pursue this appeal.



**Section B. Basis for Appeal**

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision:

Please see attached Appendix.

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2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria:

Please see attached Appendix.

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## APPENDIX

### Section B. Basis for Appeal

1. The Abbey Road Homeowners Association and individually named members will be adversely affected by the City of Redmond's decision to issue a DNS for the Emerald Heights application. Members of the Abbey Road Homeowners Association live adjacent to the site of the proposed buildings. Construction of the proposed assisted living building and independent living building will cause adverse environmental impacts to the surrounding community. The proposal will cause adverse environmental impacts through its aesthetic impacts — transforming a deep, greenbelt buffer into large buildings that are inappropriate in height, bulk, scale, architecture, and siting for the surrounding neighborhood. The aesthetic enjoyment of all surrounding residents will be adversely impacted by the proposed buildings as views and privacy will be permanently altered for both homes and passersby. Lighting will cause adverse environmental impacts to the surrounding environment, both through the loss of light to the surrounding area caused by the buildings' height and bulk and by the external and internal lighting that will impact the surrounding area at night. There is no guarantee the buildings can be fully screened over the life of the project. There will be a significant loss of native vegetation and trees that will cause adverse environmental impacts by permanently altering the environment, reducing pervious surface area for stormwater drainage, and causing aesthetic impacts to the surrounding region. The loss of vegetation will also adversely impact local wildlife that is enjoyed by members of the Abbey Road Homeowners Association by removing habitat. Any trees that might be replaced after construction will not provide the same greenspace buffer and screen that is currently in place. The proposed expansion will also add more traffic to the Abbey Road subdivision, causing adverse environmental impacts in the form of increased traffic congestion and safety impacts to children and pedestrians. The

construction of the proposed buildings will cause increased noise, dirt and emissions that will directly impact surrounding homes, along with stormwater runoff and increased traffic due to construction — all significant adverse environmental impacts. Once completed, outdoor social activities may generate noise. The institutional kitchen that serves residents and staff for the 54-unit building will emit noxious odors that will adversely impact nearby homes, some of which are less than 100 feet away from the exhaust chimney. In summary, the proposed buildings are not compatible with the single-family character of the surrounding neighborhood and land use. The single-family residential neighborhood will be irrevocably altered through the addition of large, incompatible buildings.

2. The City has erred by failing to find that the proposal would cause probable significant adverse environmental impacts that warrants a Determination of Significance and an Environmental Impact Statement, as required by WAC 197-11-360. A determination of “significance” involves consideration of both the context and intensity of the proposal. WAC 197-11-794(2). Here, the City failed to adequately consider the intensity of the proposed assisted living and independent living buildings in the context of the surrounding neighborhood, which is a particularly sensitive context as a quiet, residential area. The City also failed consider that the multiple impacts of the proposal, when considered together, will result in a significant adverse environmental impact. WAC 197-11-330(3)(c). The City did not address the proposal’s conflict with local laws for the protection of the environment in considering the proposal’s impacts — specifically, the proposal’s conflict with local zoning codes, comprehensive plan policies, and Ordinance 1454, which approved a Planned Unit Development in 1988 that set forth various conditions of approval that are no longer being met. WAC 197-11-330(3)(e)(iii). The City also failed to consider how approval of the project will establish a precedent for future action whereby

a developer can make commitments to the City and surrounding community and then revoke those commitments; and, finally, failed to consider future impacts due to the permanent increase in on-site retirement resident population including the impact on public services such EMS. WAC 197-11-330(3)(e)(iv). The City has improperly weighed the potential beneficial aspects of the proposal against the adverse environmental impacts of the proposal by allowing potential benefits to residents of Emerald Heights to outweigh the adverse environmental impacts to surrounding members of the Abbey Road Homeowners Association. WAC 197-11-330(5).

3. Abbey Road Homeowners Association is requesting that the Determination of Non-Significance issued on July 26, 2018, file no. SEPA-2018-00640, be declared invalid because it is arbitrary and capricious, not supported by substantial evidence, and contrary to law, and be reversed and remanded to the Redmond Planning Department with instructions to issue and Determination of Significance and develop an Environmental Impact Statement. Abbey Road Homeowners Association is also seeking relief by having all previous conditions imposed upon the site, including conditions imposed under Ordinance 1454, be currently implemented and enforced.

4. Please see the attached comment letter submitted by Abbey Road Homeowners Association, its members, and information to be provided at the open record public hearing as provided in RZC 21.70.190(E).

August 9, 2018

Attn: Ben Sticka  
City of Redmond  
15670 NE 85th Street  
Redmond, WA 98073-9710

cc: Erika Vandenbrande, Planning Director  
John Marchione, Mayor  
City Council Members; Anderson, Birney, Carson, Fields, Margeson, Myers, Padhye  
Michelle Hart, City Clerk

Dear Mr. Sticka,

We are writing on behalf of the Abbey Road Homeowners Association, an organization representing 205 households, to strongly object to the City of Redmond's decision to issue a DNS relative to SEPA-2018-00640. This DNS was issued on July 26, 2018 on LAND-2018-00586 and LAND-2018-00617.

This proposal will have significant adverse impacts that have not been adequately disclosed, analyzed, or mitigated by the City. In addition, the threshold determination was not based upon information reasonably sufficient to evaluate the environmental impact of a proposal.

The responsible official not only failed to independently evaluate the responses of the applicant as is required by WAC 197-11-330(1)(i) but also failed to consider that the proposal conflicts with local laws for the protection of the environment WAC 197-11-330(3)(e)(iii). Finally, environmental reviews have been done on this site before and the City failed to adequately rely on, review, and incorporate the previous Environmental Impact Statement and especially failed to incorporate the mitigation and conditions that were placed on the property in Ordinance 1454 per the SEPA review.

The proposed Assisted Living Building (ALB) and the proposed Independent Living Building (ILB) will have significant adverse impacts summarized as follows:

**Sets Harmful Precedent for City – No Consequences to Developers for Misleading Statements**

Approval of this project will set precedent that a developer in the City of Redmond can make a major commitment to preserve an aspect of the environment and then renege on that promise with no consequences. In its June 7<sup>th</sup>, 2010 Rezone Application, signed as true and accurate by the current CEO, Lisa Hardy, Emerald Heights committed to retaining the greenbelts. In addition, their SEPA checklist for the 2010 Rezone application, Emerald Heights wrote:

- *The greenbelts around the site will be retained except for a new water detention pond*
- *View for the neighboring developments will not be altered.*



### **Inappropriate Height, Bulk, and Scale Impact Aesthetics; Cannot Be Screened**

Emerald Heights is a large complex that has been mostly hidden behind a greenbelt buffer for over twenty-five years. Now it is proposing to replace large sections of the green belt with three-story buildings. The ALB, longer than a football field, will sit parallel to the road directly across the street from our detached single-family residential neighborhood. One section is over 40' high from the ground (not including mechanical equipment on the roof) and sits only 15' from the property line. The ILB sits perpendicular to the road but a corner of its three-story tower extends beyond the current greenbelt. Both are undeniably out of scale with our neighborhood and when combined with the proposed roof lines, are incompatible with the traditional gabled roofs of our homes and reflect a sensibility more associated with the architecture in our downtown area.

### **Incompatible with Neighborhood and Surrounding Land Uses**

The City of Redmond, in its Comprehensive Plan, established a definitive objective to preserve the character of our detached single-family home neighborhoods. The scale and siting of the proposed buildings, along with the ever the increasing traffic, will irrevocably change the character of our neighborhood to one more closely associated with Redmond's downtown urban core. All Education Hill residents who walk, run or bike through our neighborhood will feel the visual and physical impact. A huge, 750,000 sq. ft. complex, in the middle of a single-family residential area, constructed to the edges of its property, is an incompatible use.

### **Neighborhood Views Dramatically and Permanently Altered**

ALB: The current view is an ivy-covered fence that fronts a greenbelt buffer that is 50'-70' in depth. The fence will remain, but the greenbelt will be replaced by the full length of the ALB that has over 100 windows directly facing the backyards of neighboring homes. One section is only 15' from the property line and is over 40' in height. ILB: The corner of this three-story building will extend beyond the greenbelt just beyond the front entrance across the street from our homes and backyards. The proposed single row of new trees, coupled with the few remaining existing trees, cannot provide certainty nor can it replace the depth of the greenbelt. The change in view will be especially apparent when the deciduous trees along the street lose their leaves.

### **Natural Light Will Be Substantially Reduced**

ALB: Natural light that filters through the greenbelt will be completely blocked by a building that is the length of a football field and, and contains a section over 40' tall, not including the additional height of roof-mounted mechanical equipment. Including the potential for large shadows, this proposal will be particularly impactful in the winter months when natural light is at a premium.

### **External Lighting on Finished Buildings Visible**

ALB: There is simply no way that large scale buildings, with lit paths and safety lighting around the exterior will not impact the neighborhood around it. We already see the external lighting, filtered through the greenbelt buffer, from the existing buildings that are over 200 ft from the nearest Abbey Road Home. The ALB will be much closer.

ILB: While the Applicant has slightly modified the external lighting, the building must still be lit at night to allow residents to safely return home from the main building.

### **Internal Lighting Will Be Highly Visible**

ALB: This building has a wall of over 100 windows that will be directly across the street from Abbey Road homes. The Applicant claims residents will have blinds; yet residents who choose to leave their blinds open contribute to light visibility and a random pattern of lit windows. The applicant does not address lighting in public areas. ILB: This building will result in a lit tower at the entrance to the complex. Internal lighting will be particularly visible after street trees have lost their leaves. The proposed landscape screen provides no assurance this problem can be mitigated.

### **No Guarantee New Trees Will Screen Buildings**

Emerald Heights plans to screen both buildings with a single row of newly planted trees, and a few additional onsite trees to augment deciduous street trees. The Applicant's SEPA response indicates that the buildings will still be partially visible. Most importantly, there is no guarantee that an individual tree will mature thick enough to provide screening or will survive wind, disease or human impact over time. It is not a replacement for the depth of the current greenbelt buffer. Homeowners will be left with all the risk should the Applicant's plan fail at any point in the future.

### **Loss of Privacy for Both Homes and Passersby**

Landscaping will never fully screen the second and third floors. As a result, Emerald Heights residents will be able to look directly into the homes and backyards across the street and observe street activity below - especially with the high reliance on deciduous trees. This will be a dramatic departure from the feeling of privacy that one experiences today with the existing greenbelt buffer.

### **Additional Cars, Buses, Vans, Trucks and Emergency Vehicle Traffic**

The main entrance to Emerald Heights is through the middle of Abbey Road subdivision. Based on the only full-day traffic counts available, documented in a 2010 study for the Applicant, over 1,000 vehicles enter/exit the main entrance on an average day including private buses, vans, and delivery trucks and ambulances. With many children in the area, the incremental traffic added by this project and by the 2014 Trailside Independent Living Building is adding to existing safety concerns and congestion.

### **Loss of Native Vegetation and Trees**

Based on information provided in the Emerald Heights Tree Preservation Plans, 24% of the Significant and Landmark trees located on the site will be cut-down (180 of 759) and another 4% will be impacted (36 of 759). This proposed project affects over 28% of the existing significant and landmark trees on the site.

### **Odors from Institutional Kitchen Exhaust Chimney**

The ALB is a self-contained facility with its own kitchen that will provide meals to the residents of the 54 units. The exhaust chimney for the kitchen is less than 100' from nearby homes.

### **Construction Dirt, Noise, and Emissions**

The amount of dirt that will be excavated and removed from the site will necessitate that dump trucks make 6,000 trips through our neighborhood and the surrounding area.

### **Reduction in pervious surfaces**

Both buildings will eliminate naturally functioning pervious surfaces that infiltrate storm water and replace them with man-made systems that will quickly re-direct runoff into Tyler Creek and ultimately into the Bear Creek Watershed without any processing.

### **Potential for Improper Disposal of Hazardous Materials**

There is no evidence the City independently verified that Emerald Heights is properly handling hazardous materials.

### **Impact on Area Wildlife**

Reduction in the greenbelt means less open space for the animals that we routinely see in our neighborhood and that travel via the other greenbelts and power line trail – deer, coyote, raccoons, opossums, rabbits, etc.

### **Violates Local Laws Meant to Protect the Community and Environment**

The proposal is in non-compliance in numerous instances with both the Comprehensive Plan and the Redmond Zoning Code. For example, it is in violation of LU-11 that addresses promoting compatibility by creating an effective transition between land uses through building and site design, use of buffers, landscaping and other techniques and NU-24 Encourage use of creative and appropriate site design and housing types to balance environmental protection and achievable density.

### **Future Impacts Due to Permanent Increase in New Healthy Residents Aging in Place**

Emerald Heights is a Continuing Care Community. The new ALB is adding a net of 16 units and the proposed expansion will only service the current backlog for assisted living and skilled nursing. The addition of the ILB will contractually create the need for more future assisted living and skilled nursing services for the additional 42-80 people as they age-in-place. What is the long-term plan? What are its impacts?

### **Adverse Impact on Public Services; Property Tax Exemption Shifts Burden to Others**

Emerald Heights receives a property tax exemption from the State on property currently appraised at over 90 million dollars. Their entire property tax burden has been shifted to other property owners in our city. The proposed ILB represents a permanent increase in the population of Emerald Heights which means they will be drawing on more services but not contributing equally to the funding of those services. For example, last year there were 300 Emergency Medical Service calls to Emerald Heights – almost double the calls made in 2010 even though their on-site population did not double. Property taxes help to fund hospital districts, fire, police and EMS services, libraries, roads, schools, regional transit and other county and city provided functions.

We are seeking a withdrawal of the DNS and an Environmental Impact Statement as condition of approval of CUP LAND-2018-00586 and LAND-2018-00617.

Sincerely,

**Abbey Road Neighborhood Preservation Committee**

Charlie Dougherty  
17612 NE 110th Way  
Redmond WA 98052

Kirsten Elliott  
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Redmond WA 98052

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