**MEMO TO:** City Council

FROM: John Marchione, Mayor QUASI-JUDICIAL

**DATE:** March 2, 2010

SUBJECT: APPROVAL OF FINDINGS OF FACT, CONCLUSIONS OF LAW,

AND DECISION, OF THE CITY COUNCIL ON APPEAL L090420: JIM POTTER'S APPEAL OF THE HEARING EXAMINER'S DECISION TO DENY APPEAL L060518 OF THE OVERLAKE

**OFFICE BUILDING SHORT PLAT L040326** 

#### I. RECOMMENDED ACTION

Adopt Findings of Fact and Conclusions of Law to support City Council's decision to deny appeal.

## II. DEPARTMENT CONTACT PERSONS

Rob Odle, Director, Planning and Community Development, 425-556-2417 Judd Black, Planning Manager, 425-556-2426 Steven Fischer, Principal Planner, 425-556-2432

## III. DESCRIPTION/BACKGROUND

The City Council voted to deny the appeal filed on the Notice of Decision issued on the Overlake Short Plat. The Appellant appealed the Hearing Examiner's decision alleging that the Hearing Examiner erred in preparing Findings and Conclusions in her Decision related to the condition of approval that requires the dedication of right-of-way along both 156<sup>th</sup> Avenue NE and NE Bel-Red Road.

The City Council held a closed-record appeal hearing, as provided for in the Redmond Community Development Guide, Section 20F.30.35-120(1)(d), since the open-record appeal hearing was held by the Hearing Examiner. At this meeting the City Council allowed each side (proponents and opponents) to speak for a maximum of ten minutes. No new evidence was presented by either speaker and testimony was limited to arguments based upon the Hearing Examiner's record. The City Council denied the appeal on February 2, 2010, and the Findings of Fact and Conclusions of Law uphold the Hearing Examiner's Findings and Conclusions found in her Decision.

## IV. IMPACT

**Service Delivery:** Staff does not anticipate a significant impact in service delivery needs or fiscal impact as a result of the approval of this project

City Council

RE: COUNCIL'S ADOPTION OF FINDINGS ON APPEAL: JIM POTTER APPEAL OF HEARING

EXAMINER'S DECISIONS TO DENY APPEAL

March 2, 2010

Page 2

#### V. ALTERNATIVES

- **A.** Approve City Council's Findings. The City Council has recommended that the appeal of the Overlake Short Plat be denied based on the fact that the Hearing Examiner's reasoning and conclusions are justified and supported by the record in denying the Overlake Short Plat appeal. The denial of this appeal will result in the dedication of right-of-way along both 156<sup>th</sup> Avenue NE and NE Bel-Red Road being required as part of the Overlake Short Plat. This action will not result in a redesign of the short plat.
- **B.** <u>Approve City Council's Findings with modifications</u>. The City Council may choose to approve Findings of Fact and Conclusions of Law, based on City Council's finding that alternate conditions would better implement adopted regulations. This action would not result in a redesign of the short plat.
- **C.** Not approve Council's Findings. The City Council may choose to deny the proposed Findings of Fact and Conclusions of Law. In so doing, the City Council will need to develop alternate Findings of Fact and Conclusions of Law which support their Decision.

## VI. TIME CONSTRAINTS

The City must complete its appeal process within 90 days of the end of the appeal period. The appeal process deadline is March 4, 2010.

## VII. LIST OF ATTACHMENTS

**Attachment A:** Memorandum to Council President Cole and Redmond City Council from William Evans

**Attachment B:** Findings of Fact and Conclusions of Law for Overlake Short Plat Appeal

/s/	2/24/10
Robert G. Odle, Planning Director	Date
	2/24/10
Approved for Council Agenda: /s/	2/24/10
John Marchione, Mayor	Date

# ATTACHMENT A

## **MEMORANDUM**

To: Council President Cole and Redmond City Council

From: Wm. R. Evans

Date: February 22, 2010

Subject: City Council's Findings and Conclusions on Appeal of the Overlake Office

**Building Short Plat** 

I have attached the proposed Findings, Conclusions, and Decision for the City Council's February 2, 2010, closed record hearing on the Overlake Office Building Short Plat. The proposed Findings, Conclusions, and Decision were prepared by Redmond City Attorney James Haney. I know this might seem unusual as I am acting as your legal counsel in this appeal, but in a similar Superior Court proceeding, it would be customary for the prevailing party to be asked to prepare proposed findings and conclusions of law.

I have reviewed the Findings, Conclusions, and Decision and believe they accurately reflect the Council's deliberations and adoption of argument made by the City. The Council may adopt the Findings, Conclusions, and Decision as early as your next regular meeting on Tuesday, March 2, 2010, by passing a motion to do so. If the Council is not comfortable with the Findings, Conclusions, and Decision as proposed, the Council may modify them accordingly. If the Council wishes to have my assistance in modifying the Findings, Conclusions, and Decision, I can make arrangements to attend a future City Council meeting.

Please let me know if you have any questions.

Attachment

## ATTACHMENT B

## BEFORE THE REDMOND CITY COUNCIL

IN THE MATTER OF THE APPEAL OF	)	FILE NOs. L060518; L090420
	)	
Jim Potter	)	FINDINGS, CONCLUSIONS, AND
	)	DECISION OF CITY COUNCIL
From a Decision of the Redmond Hearing	)	APPEAL FROM HEARING EXAMINER
Examiner Denying an Appeal of a Type II	)	
Administrative Decision Approving the	)	
Overlake Office Building Short Plat, File	)	
No. L40326	)	
	)	

#### **SUMMARY OF DECISION**

The decision of the Redmond Hearing Examiner dated November 18, 2009 is **UPHELD** and the appeal filed by Appellant Potter is **DENIED**.

## ADOPTION OF HEARING EXAMINER'S FINDINGS AND CONCLUSIONS

The November 18, 2009 Findings and Conclusions of the Hearing Examiner are hereby adopted in full as support for the City Council's decision on the appeal.

## ADDITIONAL FINDINGS, CONCLUSIONS, AND REASONING

In further support of its decision on the appeal, the City Council sets forth the following:

- 1. Under RCDG 20F.30.35-120, the City Council must uphold the Hearing Examiner's decision unless the decision is not supported by a preponderance of the evidence or was clearly erroneous.
- 2. Appellant Potter claims that the Hearing Examiner erred in making that portion of Finding 26, in which the Examiner stated that "Appellant Potter acknowledged that he could justifiably be required to contribute to the cost of BROTS Project 22.3 because the short plat would increase traffic volumes at the intersection. However, Appellant Potter notes that there is already significant traffic at that intersection and any increase caused by the short plat would only be a portion of the total volume."
- 2. In support of her finding, the Hearing Examiner cited Exhibit C-1, the City Staff Report, Attachment 9. Attachment 9 is Mr. Potter's appeal form dated December 26, 2006, which includes a letter from Robert Johns of Johns Monroe Mitsunaga dated April 21, 2006. On pages 2 and 3 of the letter, Mr. Johns stated:

My clients recognize that they can justifiably be required to contribute to the cost of constructing the right turn lane that is identified as BROTS Project 22.3 because their project will contribute to traffic volumes at that location. However, they also recognize that their project is only part of the traffic volume. There is already a substantial volume of traffic at that intersection due to existing development in the area, as well as the likelihood that additional traffic will be generated by other development in the BROTS area. Since this is a BROTS project, there is also a share of the cost of this project attributable to traffic generated in the City of Bellevue.

- 3. The Hearing Examiner's Finding 26 is an accurate summary of this portion of Appellant Potter's appeal statement. The Finding is thus supported by a preponderance of the evidence and must be upheld.
- 4. Appellant Potter challenges the Hearing Examiner's Findings 27, 29, and 30, arguing that it is unclear whether these are findings or merely summaries of testimony and argument. Each of the challenged findings uses language like "City staff testified that" (Finding 27), "the City argued that" (Finding 29), and "Counsel for the City argued" (Finding 30).
- 5. From the quoted language in the Findings, the Council concludes that these Findings are summaries of testimony given and arguments made. The Council understands that Appellant Potter disagrees with the testimony and arguments but finds that they are accurate summaries of what was said and thus the findings are supported by a preponderance of the evidence.
- 6. The crux of Appellant Potter's argument on appeal is that the Examiner erred in reaching Conclusion 2, upholding the requirement to dedicate right-of-way as a condition of short plat approval. Appellant Potter's argument is that the City failed to meet its burden of proving that the right-of-way dedication met constitutional requirements for nexus and proportionality. Appellant Potter argues that because he is not actually proposing to build on his short plat at the present time, there is no impact on the intersection from the short plat and that therefore no nexus between the short plat and the required improvement. The Council disagrees.
- 7. In *Burton v. Clark County*, 91 Wn. App. 505 (1998), the Washington Court of Appeals set forth four factors to be considered in determining whether a dedication of right-of-way can be required:
  - a. The City must identify a legitimate public problem;
  - b. The public problem must be exacerbated by the development;
  - c. The dedication must contribute to alleviating the public problem; and
  - d. The dedication must be roughly proportional to the impacts of the development.

- 8. The City proved all four of the *Burton* criteria were met in this case. First, as the Hearing Examiner found in Finding 23, the City's adopted level of service for the intersection of 156th and Bel-Red Road is LOS E and the 1996 BROTS study predicts that the intersection will degrade to LOS F sometime in 2010. The evidence that provided the basis for Finding 23 was undisputed by Appellant Potter in the hearing before the Examiner and Appellant Potter did not challenge Finding 23 in his appeal to the City Council. The Finding must therefore be taken as true and correct in this appeal. There is a public problem at the intersection of 156th and Bel-Red Road in that the intersection will degrade below City standards this year.
- 9. Second, in Finding 22 the Hearing Examiner found that traffic volumes generated by development of Appellant Potter's property would increase over the present 102 trips leaving the site in all development scenarios considered by City staff except one. In Finding 23, the Hearing Examiner found that any new trips from the short plat would contribute to the overall reduction in level of service at the intersection of 156th and Bel-Red Road. No evidence was presented by Appellant Potter at the hearing to contradict these findings and Findings 22 and 23 are not challenged in this appeal. Development of the short plat will contribute to the public problem of the failure of the intersection at 156th and Bel-Red Road to meet the City's LOS standards.
- 10. Appellant Potter's argument that he is not building now and that his short plat therefore has no impact is not well-taken. Short plat approval does not just draw lines on a map; approval carries with it the right to develop the lots in question. That's why the state subdivision statute, specifically RCW 58.17.060 and 58.17.110, requires that no short plat be approved unless the local government makes a finding that adequate provision has been made for streets, roads, and other public ways. In determining whether a dedication is required as the result of short plat approval, the City must consider what the impacts of the lots will be when developed. Considering that in the present case, the Council concludes that development of the short plat will create trips that will impact the intersection and contribute to the degradation in level of service at 156th and Bel-Red Road.
- 11. Third, the improvement that the City requested dedication of right-of-way for, a right turn lane from 156th to Bel-Red Road, will help alleviate the public problem. Mr. Almond testified (see page 5 of the Hearing Examiner's hearing minutes) that the southbound right turn lane at 156th and Bel-Red Road would mitigate the traffic congestion. He cited to the 1996 BROTS study admitted as Exhibit C-2 in the hearing, which supports his testimony. Appellant Potter presented no evidence at the hearing to contradict this. The right turn lane will keep the intersection from degrading to LOS F and thus alleviate the problem of the LOS degradation.
- 12. Fourth, dedication of the right-of-way is proportionate in scope and nature to the impacts of the short plat. The impacts of the short plat are clear. The condition requires only dedication of the right-of-way, not improvement. While no evidence was presented by either City staff or Appellant Potter concerning the value of the right-of-way, Appellant Potter would receive credit for the value of the right-of-way against future traffic impact

fees to be paid in connection with development of the short plat. The right-of-way dedication will thus help alleviate the impacts of the short plat and its cost to the developer could be zero. This is not disproportional.

- 13. The four criteria of *Burton* are all met in this case and the City staff met its burden of proof regarding the requirement for dedication of right-of-way. The ultimate conclusion reached by the Hearing Examiner in Conclusion No. 2 is thus not clearly erroneous. The condition requiring right-of-way dedication is justified by the record and the Hearing Examiner's decision must therefore be upheld and the appeal denied.
- 14. To the extent that the City Council's reasoning or conclusions differ from the Hearing Examiner's in any respect, the Council finds that its reasoning and conclusions are justified and supported by the record and that the ultimate conclusion of the Hearing Examiner upholding the condition and denying the appeal was sound.

## **DECISION**

For all of the reasons set forth above and in the Hearing Examiner's November 19, 2009 Findings, Conclusions, and Decision, the Hearing Examiner's decision is hereby **UPHELD** and the appeal of Appellant Jim Potter is hereby **DENIED**.

ADOPTED by the R , 2010.	edmond City Council at a regular meeting thereof this day of
	MAYOR JOHN MARCHIONE
ATTEST:	
CITY CLERK MICHELLE	M. MCGEHEE, CMC