

**BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND**

In the Matter of the Application of) NO. L100421
) L100422
Puget Sound Energy)
)
)
)
for approval of a) **DECISION ON RECONSIDERATION**
Conditional Use Permit)
_____)

BACKGROUND

On February 14, 2011 the City of Redmond Hearing Examiner conducted an open record public hearing on the above-captioned conditional use permit application. During the proceedings, the Applicant and the City Staff provided evidence in response to public comment that not been available for review by the public prior to the hearing. Interested neighboring property owners Bel-Red Real Estate Group and 15301 Redmond LLC, via counsel, requested the opportunity to review the evidence offered by the Applicant at hearing and submit additional testimony. A Post-Hearing Order, issued February 16, 2011 memorialized the evidence for which the record was held open and the deadlines established for submittal. The Order stated that the record was closed to any other evidence.

On March 10, 2011, 15301 Redmond LLC filed a "Motion for Leave to File an Objection and Supplemental Response".¹ The Motion sought to supplement the record with two declarations. The Applicant submitted an objection to the motion and to the offered new evidence.

On March 15, 2011, the Examiner issued Findings, Conclusions, and a Recommendation (the Recommendation) to the City Council to approve with conditions the above-captioned request for conditional use permit submitted by Puget Sound Energy.² The Recommendation denied the Motion for Leave and did not admit the new evidence offered March 10th by 15301 Redmond LLC.

On March 29, 2011, 15301 Redmond LLC timely requested reconsideration, asking that the Examiner withdraw the Recommendation, reopen the hearing to accept additional evidence, and correct errors alleged in the findings and conclusions.

¹ On page 6, in the Summary of Record, the March 15, 2011 Recommendation erroneously identified the Motion for Leave as submitted March 8th.

² The Recommendation was issued revised March 17, 2011, for the correction of scrivener errors. The revision did not substantively alter the decision and the issuance date did not change for appeal purposes.

JURISDICTION

Requests for reconsideration of Hearing Examiner recommendations in Type IV applications are governed by Redmond Community Development Code (RCDG) 20F.30.45-100(6), which states:

Any party of record may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 14 days after the filing of the request for an appeal by either denying the request, issuing a revised decision, or calling for an additional public hearing.

REQUEST FOR RECONSIDERATION: ALLEGED ERRORS OF PROCEDURE OR FACT

1. 15301 Redmond LLC objects to the adequacy of the noise study in the record at Exhibit 1, Attachment 13, arguing that the study does not address noise from the 40-MVA transformers which the proposed facility is designed to accommodate at ultimate build out. The reconsideration request contends that Findings 9 and 32, relied upon in conclusion 6, are incorrect because they don't address the size of transformer the substation is designed to accommodate at the time of a potential future upgrade. The reconsideration request further argues that compliance with the City's noise ordinance is not the appropriate standard when considering the noise impacts of a proposed conditional use. In support of the argument that the cited findings and conclusions are insufficient, 15301 Redmond LLC submitted the declaration of Michael Yantis, not previously offered.
2. 15301 Redmond LLC argues that finding 48 and associated conclusions, relating to EMF exposure risks associated with electric substations, are not supported by the evidence. Specifically, it is alleged that finding 48 does not address the risk of exposure from transformer lines. Finding 48 states:

Neither the federal government nor Washington State has adopted standards for public exposure to power frequency EMF. Two entities have established exposure guidelines: the International Commission on Non-Ionizing Radiation Protection (ICNIRP) and the Institute of Electrical and Electronic Engineers (IEEE). As of November 2010, the ICNIRP recommendation is for a maximum public exposure of 2,000 milliGauss (mG), and the IEEE's recommendation is for a maximum of 9,040 mG. Outside the 10-foot architectural wall, EMF levels would be far lower. Due to site design and the height of transmission lines, no neighboring uses would come close to these suggested maximum exposures. *Thatcher Testimony; Exhibit 1, Attachment 5; Exhibits 11 and 12.*

In identifying the evidence with which finding 48 allegedly does not comport, the reconsideration request cites the testimony of Applicant expert Andrew Thatcher and offers a declaration by Jessica Ritts, not previously offered. Also attached to the

reconsideration request is the declaration of David Carpenter, previously offered by 15301 Redmond LLC after the close of the record and not admitted. The reconsideration request reasserts the argument, offered at hearing, that the Applicant should not be able to present "new" evidence for the first time at hearing.

3. The request for reconsideration contends that finding 49 is unsupported by evidence, reasserting the argument offered at hearing that substations have the effect of discouraging residential development on adjacent properties. Finding 49 states:

Regarding discouraging residential development, PSE has not found that proximity to a substation appears to deter residential development of adjacent properties. They submitted before and after aerial photography of two substations, one in Renton and one in Redmond. In the Renton example, a 1980 photograph shows the substation site surrounded by undeveloped property, while a 2011 aerial photo of the same area shows the substation site completely surrounded by development, much of it comprised of multifamily residential units. In the Redmond example, a 1980 aerial photograph shows the President Park Substation surrounded by largely undeveloped land, while a 2011 photo of the same area shows the Kenilworth Substation surrounded by single-family residential development. *Exhibits 9.5 and 9.6; Heller Comments.*

15301 Redmond LLC argues that the aerial photos were offered for the first time at hearing ("new" evidence) and that no site specific analysis was done. In addition, the request for reconsideration re-offers the declaration of Peter Shorett, which was previously offered by 15301 Redmond LLC after the close of the record and not admitted.

4. The request for reconsideration argues that there is insufficient information in the record, and in finding 30, about the appearance and construction of the western wall, which would separate the proposed substation from the 15301 Redmond LLC property. Finding 30 states:

The mass and bulk of the proposed improvements is less than would be allowed for commercial or retail uses outright without a permit. *See Exhibit 9.3.* Site improvements would be enclosed behind a ten foot architectural wall constructed of concrete panels on the north, east, and south sides of the site. The western wall would be screened by landscaping incorporated into the MSE wall with a welded metal fence along the top. Three dead end structures 30 feet in height and 16-foot cast concrete panel firewalls would be built within enclosure. The new and replaced transmission poles will vary in height depending on final site design, but are anticipated to range from 75 to 105 feet in height. On-site areas outside the 10-foot architectural wall would be landscaped and provided with pedestrian amenities including benches. Photosimulations provided by the Applicant demonstrate the approximate visual impacts of the proposed development from adjoining streets and

properties. The upper portions of the three dead end towers, the firewalls, and some of the substation equipment would be visible to pedestrians and motorists above the architectural wall. The Applicant is working with local artists regarding design of thematic and structural elements of the architectural wall, the gates, and the transmission poles adjacent to the site. The project is required to obtain approval of the City's Design Review Board. *Exhibit 1, page 8; Exhibit 1, Attachments 5 and 14; Exhibit 3, Slides 8 and 9; Exhibit 9.4.*

DISCUSSION

1. The noise study complained of was an attachment to the staff report, which 15301 Redmond LLC had the opportunity to review, along with all the other attachments, prior to the public hearing. Acknowledging that the project is designed to allow future capacity expansion, the study properly reviewed the extent of the development currently proposed. Future potential substation capacity increases would undergo all required review at the time the capacity increase is proposed. This post-hearing (post-decision) objection and the newly offered evidence are untimely. *See Exhibit 1, Attachment 13.*
2. 15301 Redmond LLC argued harm from EMF exposure in its pre-hearing comments, at hearing, and in its post-hearing submittal at Exhibit 15. They raised the issue in their February 11 comments, which is why the Applicant brought an expert to the hearing. 15301 Redmond LLC had the full opportunity provided by code to submit timely evidence on this issue. Its timely evidence was considered and weighed with all other evidence when the findings and conclusions were issued.
3. As noted in the Recommendation, the recent multifamily residential development in the vicinity of the subject property was built across from the existing Interlaken substation. Finding 49 cites Exhibits 9.5 and 9.6, aerial photography showing residential development on vacant land adjacent to existing substations. 15301 Redmond LLC's argument on this issue was considered and weighed with all other evidence when the findings and conclusions were issued.
4. Finding 30 cites to Exhibit 3, slides 8 and 9, which depict photo-simulation elevations of the completed project from Bel-Red Road and NE 24th Street. It also cites to Exhibit 9.3, which graphically depicts the dead-end towers and other equipment as they will show over the 10-foot architectural wall, and 9.4, a photo-simulation that shows the transformer towers as they will appear above the existing Office Depot building on the 15301 Redmond LLC property. The finding is based on sufficient evidence.
5. 15301 Redmond LLC's objection to "new" evidence offered at hearing by PSE is misplaced. Open record hearings are the appropriate venue for a project proponent to bring evidence in response to public comment. 15301 Redmond LLC submitted pre-hearing comments asserting (among other things) that EMFs would harm adjacent uses and that substations in general discourage residential development of adjacent parcels. They were represented by counsel at hearing and had every opportunity to offer evidence in support of their arguments that is afforded by code. 15301 Redmond LLC has had a

greater opportunity to respond to material presented by the project proponent than is normally provided to members of the public.³

ORDER

1. The request for reconsideration is **DENIED**.
2. No additional evidence is admitted.
3. This decision on reconsideration shall be added to the record of the above captioned matter.

Ordered April 11, 2011.

By:



Sharon A. Rice
City of Redmond Hearing Examiner

³ Open Record Hearing. A hearing, conducted by the Hearing Examiner, Board of Adjustment or City Council, that creates the city's record through testimony and submission of evidence and information, under procedures prescribed by the City by ordinance or resolution. An open record hearing may be held prior to the city's decision on a project permit to be known as an "open record predecision hearing." *Redmond Community Development Guide (RCDG) 20A.20.150*. Closed Record Appeal. An administrative appeal on the record to the City Council or Hearing Examiner, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed. *RCDG 20A.20.030*.