



## Planning Commission Report

**To:** City Council

**From:** Planning Commission

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**Date:** May 24, 2017

**File Numbers:** LAND-2017-00052

**Planning Commission Recommendation:** Denial

**Title:** Redmond Zoning Code Amendment: Appeals to City Council & Reclassification of Conditional Use Permits

**Recommended Action:** Deny the proposed amendment to Redmond Zoning Code (RZC) Section 21.76 "Review Procedures" shown in Exhibit A.

**Summary:** The Zoning Code amendment as proposed by the Technical Committee would: remove the City Council as the second appeal body for Type I & II permits, and reduce the Conditional Use Permit review type from a Type IV permit to a Type III.

**Reasons the Proposal Should be Denied:** The Planning Commission recommends denial of the proposed Zoning Code amendment because:

- Changing the second appeal for Type I and Type II permits to go directly to Superior Court would financially burden appellants, and the anticipated legal costs may discourage applicants from seeking a second appeal,
- Removing the Council as the second appeal body for these permit types could possibly erode the community connection between residents and elected city officials, and
- Given the relatively few issues that go on to a second appeal, there are no compelling reasons to amend the Zoning Code.

## Recommended Findings of Fact

### 1. *Public Hearing and Notice*

#### a. **Public Hearing Date**

The City of Redmond Planning Commission held a public hearing on the proposed amendment on March 22, 2017 and kept the public hearing open for written comment until April 12, 2017. No oral testimony was given at the hearing, although written testimony was received via email and is summarized in the Commission's Issues Matrix and in *Exhibit B*.

#### b. **Notice**

Notice of the public hearing was published in the Eastside edition of the Seattle Times. Public notices were posted in City Hall and at the Redmond Library. Notice was also provided by including the hearing in the Planning Commission agendas and extended agendas, which were posted on the City web site and mailed to members of the public and various agencies. At the request of the Planning Commission, public outreach was extended to include large-scale property owners, developers, a business organization, former appellants, the Lake Washington School District, Sound Transit, a land use attorney, project managers, and architects.

## Recommended Conclusions

### 1. *Key Issues Discussed by the Planning Commission*

*Exhibit B* summarizes the Planning Commission's discussion of issues and staff responses. A summary of the Planning Commission's discussion of key issues is provided below. *Exhibit C* contains written comments and *Exhibit D* contains the Planning Commission's meeting minutes from March 22, 2017.

#### a. **Current Process, Policies & History**

The Commission discussed several aspects of the current process, policies, and history of the City's appeals and the Conditional Use Permit (CUP). They asked staff to describe the role of the City in the appeals process, grounds for and frequency of appeals, the process for selecting a hearing examiner, and the extent of the City's involvement in quasi-judicial matters. In summary, this included:

- The City can appeal or be a party to an appeal to Superior Court, although it is not common
- The grounds of appeal must be rooted in the appeals decision criteria listed in RZC 21.76.060

- The Hearing Examiner is selected through a Request For Proposal process and is selected by the City Council on a two year cycle
- The City Council does not deal with any quasi-judicial matters outside of land use or business licenses
- Nine appeals have been filed within the last three years, with two of those appeals moving on to a second appeal in front of City Council
- Four Conditional Use Permits have been filed in the last three years

The Commissioners also considered the options Councilmembers have when faced with a conflict of interest regarding an appeal. One Commissioner noted that a conflict of interest could impair a Councilmember's ability to act in a manner that is conducive to good business and community interests. The proposed process would remove conflict of interest issues, and allow Councilmembers to engage with applicants without risk of violating the appearance of fairness doctrine.

#### **b. Cost Implications**

The Commission discussed the potential cost implications (specifically legal costs) of removing the City Council as the second appeal body for Type 1 and Type II permits and having the second appeal move directly to Superior Court. Staff described that the cost implications to an appellant are difficult to determine since legal representation is not required for appeal hearings and costs for private legal representation vary. Staff shared the City's cost in processing appeals based on a study completed for the recent appeals fee resolution. The Commission discussed the legal costs that would potentially be incurred by appellants and the likelihood of appellants appearing unrepresented at a judicial hearing (Superior Court).

The Commission concluded that the proposed process for a second appeal would financially burden appellants, especially residents, although it is unknown to what degree. The Commission voiced concern that the costs could even be more burdensome if the appellant loses the appeal and is, as typical, required to pay appellee's attorney fees. The Commission concluded it would be unlikely that appellants, particularly residents, would appeal unrepresented in court and in fact, legal costs may discourage applicants from pursuing a second appeal.

#### **c. Public Outreach**

The Commission was concerned that the amount of public outreach may not have been sufficient. Staff described that the typical approach for such a broad code amendment is to follow code-prescribed noticing procedures of posting to the Seattle Times, City Hall, and at the library. The Commission directed staff to solicit feedback from large land owners, developers, attorneys, past appellants, and other potential stakeholders. The Commission received four comments during the public hearing period. One comment indicated that the individual did not have an opinion on the matter. One comment was supportive of the proposed amendments as it would

remove a potential delay to development and shield the City from a source of potential litigation. Two comments were against the proposed amendments.

**d. Pros & Cons**

The Commission discussed the amendment's pros and cons related to developers/property owners, and the community. Staff's list of potential pros and cons for each group was found to be very similar. The Commissioners noted that developers/property owners would have an advantage of one less avenue of appeals to potentially slow approval. Also, it was noted that developers/property owners likely have an advantage in navigating the legal system when pursuing an appeal, as opposed to residents and community groups. For these reasons, the Commission concluded that residents and community groups might fall into a disadvantaged position.

**e. Necessity**

The Commission discussed the necessity of revising the code as proposed. The Commission considered the number of appeals filed with the City in the last three years, and the number that had gone on to a second appeal before the City Council. Two of the nine appeals filed had been appealed to the City Council. The Commission concluded that this did not show a solid statement of need to support the proposal. The Commission concluded that they could not point to a compelling reason to change the RZC to support the recommendation. The Commission expressed significant concern that the need to change the code did not derive clear benefits, especially for residents. Further, they concurred that removing the Council as the second appeal body could possibly erode the community connection between residents and elected city officials. The Commission agreed that this concern outweighed the time savings, streamlining, and other efficiencies that might be gained by the amendment.

**2. Recommended Conclusions of the Technical Committee**

The recommended conclusions in the Technical Committee Report (*Exhibit E*) should be adopted as conclusions, with the exception of the recommendation.

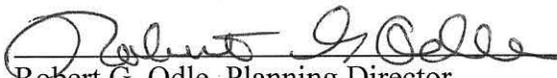
**3. Planning Commission Recommendation**

The motion to recommend approval of the Technical Committee's proposed amendment to the Redmond Zoning Code regarding removing the City Council as the second appeals body for Type I & II permits was not seconded. The motion failed.

The motion to recommend approval of the Technical Committee's proposed amendment to the Redmond Zoning Code regarding reducing the Conditional Use Permit review type from a Type IV to a Type III was not seconded. The motion failed.

## List of Attachments

- Exhibit A: Zoning Code Amendments as Proposed by Technical Committee**
- Exhibit B: Planning Commission Final Issues Matrix**
- Exhibit C: Written Public Testimony**
- Exhibit D: Planning Commission Meeting Minutes for March 22, 2017**
- Exhibit E: Technical Committee Report with Exhibits**

  
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Robert G. Odle, Planning Director

5/17/17  
Date

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Scott Biethan, Planning Commission Chairperson

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Date

Approved for Council Agenda \_\_\_\_\_  
John Marchione, Mayor

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Date