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2 BEFORE THE HEARING EXAMINER FOR THE CITY OF EDMONDS

3 RE: Classico Homes )

4 Appeal )

5 APL2011-0005 )  
6 )  
7 )

DECISION ON RECONSIDERATION

8 The City of Edmonds and the Applicant have requested the Examiner to reconsider his decision to  
9 dismiss the above-captioned appeal on grounds of inadequate notice. The Examiner declines to  
10 revise or reverse his decision.

11 The Examiner dismissed the above-captioned appeal on the basis that notice of the appeal hearing  
12 was not mailed to property owners within 300 feet as required by ECDC 20.03.003(C). The City and  
13 the applicant requested reconsideration by way of letters dated December 29, 2011 and January 4,  
14 2012. The basis of the reconsideration requests is that an asserted contradictory code provision,  
15 ECDC 20.07.004(F), does not require mailed notice and this contradictory position controls because  
16 it is the most specific provision governing notice requirements for administrative appeal hearings.  
17 Alan Rutledge was given until January 16, 2012 to respond to the reconsideration requests. Mr.  
18 Rutledge was the only person who participated in the hearing other than the applicant and the City of  
19 Edmonds. Mr. Rutledge provided no response.

20 There is no conflict in the ECDC on notice requirements for administrative appeals. The ECDC  
21 clearly requires mailed notice for open record hearings of Type II decisions. The allegedly conflicting  
22 provision relied upon by the City and Applicant governs closed record appeals of Type III decisions.  
23 As discussed below there is a sound policy rationale for adopting differing notice procedures for open  
24 record appeals as opposed to closed record appeals. Even if there was a conflict, ECDC 20.01.000(A)  
25 provides that for conflicting provisions the more restrictive provision would apply.

26 The code basis for the interpretation in this decision is unambiguous and straightforward. As pointed  
out by staff in their reconsideration request, ECDC 20.01.001(A) provides that “[u]nless otherwise  
provided, appeals of Type II decisions shall be initiated as set forth in ECDC 20.07.004.” ECDC  
20.07.004 governs the procedures for closed record appeals, essentially appeals of Type III decisions.  
ECDC 20.07.004(F) governs one subset of the closed record appeal procedures, namely the notice  
requirements. However, the notice requirements for appeals of Type II decision is “otherwise  
provided” in ECDC 20.03.003(B), which states that “[a] notice of public hearing shall be provided  
by the city for Type III or Type IV actions, as well as appeals of Type II actions, by mailing, posting  
and publishing.” (emphasis added). ECDC 20.03.003(C) details how to accomplish the required  
mailing.

1 The policy rationale for requiring notice procedures for appeal of Type II decisions that differ from  
2 those in closed records appeal is sound. The Regulatory Reform Act, Chapter 36.70B, restricts the  
3 introduction of new evidence in closed record review. Because of this restriction, participants in  
4 closed record review can only argue evidence that was presented at the open record hearing below.  
5 Hearing participants are largely left making the same arguments they made below. Persons who did  
6 not attend the open record hearing would most likely have different perspectives to share based upon  
7 prohibited new evidence. Those persons would also likely have little or no knowledge of what  
8 evidence was new as opposed to what was already in the record. Consequently, providing notice to  
9 persons who are not parties of record would create confusion and an expectation that there was an  
10 opportunity for unfettered comment when in fact the opportunity to comment is significantly  
11 restricted. By contrast, there is no restriction on new evidence (beyond relevancy and the like) in an  
12 open record hearing of a Type II decision. The Regulatory Reform Act would not preclude the  
13 consideration of new evidence in a Type II appeal hearing.

9 A second policy rational is fundamental fairness. In closed record appeals, the public was already  
10 given an opportunity to provide new evidence in the open record hearing below. If someone wasn't  
11 interested enough in the application to participate in the open record hearing, there is no compelling  
12 reason to give them a second opportunity to provide new comment in a closed record appeal.

12 In its reconsideration request the Applicant states that specific notice should not be required because a  
13 code interpretation affects the City as a whole. It can also be argued that the interpretation more  
14 immediately affects adjoining property owners who will be directly affected by the height of the  
15 proposed development. Both arguments have merit. Ultimately the clarity of the language of the  
16 code strongly suggests that the legislative intent favors the position that adjoining property owners  
17 can be more directly impacted than the public as a whole by code interpretation disputes.

16 Even if a person were able to find some conflict in these provisions, rules of statutory construction  
17 provide that only when two conflicting statutes cannot be harmonized will the more specific statute  
18 supersede a general statute. *Walker v. Wenatchee Valley Truck and Auto Outlet, Inc.*, 155 Wn. App.  
19 199 (2010). The allegedly conflicting provisions of this case are easily harmonized as interpreted  
20 above. An alternate interpretation that would harmonize the provisions would be to find that ECDC  
21 adds to the notice provisions of ECDC 20.03.003(B). Given these two interpretations, there is no  
22 reason to interpret them as conflicting and one provision superseding the other.

21 Finally, even if the provisions irreconcilably conflict, the ECDC requires that the mailed notice  
22 provision prevails. ECDC 20.01.000(B) provides that where a conflict exists within Title 20, the  
23 more restrictive provision applies. Title 20 addresses procedural issues almost exclusively, so the  
24 more "restrictive" requirement would have to be interpreted as the provision imposing the greater  
25 burden of procedural compliance. Erring on the side of providing more, as opposed to less, public  
26 notice in the case of conflict would most likely be consistent with legislative intent in interpreting  
"restrictive" in ECDC 20.01.000(B). ECDC 20.03.003(B) is the more restrictive of the two allegedly  
conflicting provisions and so governs in this case.

1 **DECISION**

2 The appeal remains dismissed because mailed notice was not sent for the hearing as required by City  
3 regulations.

4 DATED this 25th day of January, 2012.

5 

6 Phil A. Olbrechts  
7 City of Edmonds Hearing Examiner

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9 **Appeal Right and Valuation Notices**

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11 This decision is final and only subject to appeal to superior court as governed by Chapter 36.70C  
12 RCW. Appeal deadlines are short (21 days from issuance of the decision) and the courts strictly  
13 apply the procedural requirements for filing an appeal.

14 Affected property owners may request a change in valuation for property tax purposes  
15 notwithstanding any program of revaluation.  
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**DECLARATION OF MAILING**  
Appeal of Building Official Determination  
APL2011-0005

I, Phil Olbrechts, make the following declaration:

1. I am a resident of the State of Washington, over the age of 18 years, not a party to this action, and competent to be a witness herein.

2. On the 26th day of January, 2012, I mailed, via First Class U.S. Mail, a true and correct copy of the DECISION ON RECONSIDERATION on the above captioned matter to the following:

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98020

Joseph Schmaus  
8552 202<sup>nd</sup> St SW  
Edmonds, WA 98020

John Bissell  
8630 217<sup>th</sup> ST SW  
Edmonds, WA 98026

3. On the 26th day of January, 2012 I hand delivered a true and correct copy of the DECISION ON RECONSIDERATION to Diane Cunningham, on behalf of the City of Edmonds, at the Edmonds City Council Meeting Chambers.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Granite Falls, Washington, this 26thth day of January, 2012.

  
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Phil Olbrechts