

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

In the Matter of the Appeal of	)	Nos. HEA-2017-03 and
	)	P-15-0116
<b>Robert and Deborah Drugge</b>	)	
	)	FINDINGS, CONCLUSIONS,
<u>of an Administrative Decision</u>	)	AND DECISION

**SUMMARY OF DECISION**

Because additional analysis is needed on whether the administrative adjustment would constitute a grant of special privilege inconsistent with the limitations placed on uses of other properties within the Rodesco Estates subdivision; on whether stormwater-related issues on the property pose a risk to the public health, safety, comfort, convenience, and general welfare; and on whether the proposal would adversely affect the established character of the surrounding neighborhood, the final administrative decision is **REMANDED** to the City of Puyallup Community Development Director for further consideration, consistent with this decision.

**SUMMARY OF PROCEEDINGS**

Hearing Date:

The Hearing Examiner held an open record hearing on the appeal on January 30, 2018.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

*Appellant Witnesses:*

Robert Drugge  
Colleen Houghton  
Dawne Carlisle  
Wayne Coudriet  
Dick Boyle  
Jim Elder

*Applicant Witnesses:*

Keith Techmeier  
Kyeung Techmeier

*City Witnesses:*

Kendall Wals, City Associate Planner  
Tom Utterback, City Community Development Director  
Alicia Floyd, City Development Review Engineer

*Findings, Conclusions, and Decision*

*Puyallup Hearing Examiner*

*Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116*

Exhibits:

The following exhibits were admitted into the record at the hearing:

*Appellant Exhibits:*

- A-1. Title Insurance Policy (Robert and Deborah Drugge), effective May 16, 2003
- A-2. Protective Covenants and Restrictions for Rodesco Estates, recorded June 2, 1980 (*same as B-1*)
- A-3. Rodesco Property Size Information and Parcel Printout, undated
- A-4. Chapter 20.86 Puyallup Municipal Code – Adjustments; Chapter 20.20 Puyallup Municipal Code – Single-Family Residential Zones
- A-5. Administrative Adjustment Notice of Preliminary Approval, dated November 22, 2016; Initial Response to Preliminary Decision Comments, dated December 16, 2016; Final Decision for Project #P-15-0116, dated November 14, 2017 (*same as B-2 and C-6*)
- A-6. Public Comments:
  - a. Email from Debbie Drugge to Kendall Wals, dated January 23, 2018
  - b. Email from Leslie Fenske to Kendall Wals, dated January 21, 2018
  - c. Email from Wayne Coudriet to Kendall Wals, dated December 9, 2016
  - d. Email from Dawne Carlisle to Kendall Wals, dated December 7, 2016
  - e. Email from Keith and Colleen Houghton to Kendall Wals, dated December 7, 2016
  - f. Email from Robert Drugge to Kendall Wals, dated December 6, 2016, with email string
  - g. Letter from Robert and Debbie Drugge to Kendall Wals, dated December 5, 2016
- A-7. Information on Properties Granted Variances within 1,000 feet of Subject Property; Administrative Adjustment Table, received December 5, 2017; Six Photos, undated
- A-8. Four Photos Addressing Stormwater Impact on Adjacent Property, undated

*Applicant Exhibits:*

- B-1. Protective Covenants and Restrictions for Rodesco Estates, recorded June 2, 1980 (*same as A-2*)
- B-2. Final Decision for Project #P-15-0116, dated November 14, 2017 (*same as A-5 and C-6*)
- B-3. Administrative Adjustments within 1,000 feet of Subject Property, undated
- B-4. Administrative Adjustment Preliminary Approval (P-15-0116), undated (*same as C-4*)
- B-5. Preliminary Stormwater Site Plan, Azure Green Consultants, dated December 1, 2017
- B-6. Addendum for the Wetland Reconnaissance and Verification Report, John Comis Associates, LLC, dated August 24, 2017
- B-7. Technical Memorandum – Techmeier Site Hydric Soils Assessment, SCJ Alliance, dated October 5, 2017
- B-8. Applicant Comments, dated January 30, 2017
- B-9. Three Photos, undated
- B-10. Home Design for Additional Residence, undated

*City Exhibits:*

- C-1. Staff Report, dated January 22, 2018

*Findings, Conclusions, and Decision*

*Puyallup Hearing Examiner*

*Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116*

- C-2. Application for Administrative Adjustment for Minor Infill Development (P-15-0116), received December 17, 2015
- C-3. Short Plat Drawing (Sheet 2 of 2), undated
- C-4. Administrative Adjustment Preliminary Approval (P-15-0116), undated (*same as B-4*)
- C-5. Public Comments (*same as A-6*)
- C-6. Final Decision for Project #P-15-0116, dated November 14, 2017 (*same as A-5 and B-2*)
- C-7. Appeal Statement, received November 27, 2017
- C-8. Notice of Public Hearing, with ad copy, published January 22, 2018; Adjacent Property Map and Parties of Record

#### Orders and Pleadings

- Pre-Hearing Order, dated December 8, 2017
- Revised Pre-Hearing Order, dated December 20, 2017
- Corrected Pre-Hearing Order, dated December 21, 2017
- City of Puyallup’s Motion to Suppress Arguments, dated January 4, 2018
- Response to City of Puyallup’s Motion to Suppress Arguments, dated January 4, 2018
- Decision on City’s Motion, dated January 16, 2018
- Appellant’s Witness and Document list, dated January 22, 2018
- Applicant’s Document List, received January 22, 2018
- City of Puyallup’s Witness and Exhibit List, dated January 22, 2018

The Hearing Examiner makes the following findings and conclusions based upon the admitted testimony and exhibits:

### **FINDINGS**

#### Background

1. On December 17, 2015, property owners Keith and Kyeung Techmeier (Applicant), filed an application to short-plat a developed 65,394 square foot lot, at 2307 41<sup>st</sup> Street SE, within the Rodesco Estates neighborhood. The existing home on the property would be retained on Lot 1, while Lot 2 would be available for further residential development. Because the property is located in the RS-35 zone, which requires a minimum lot size of 35,000 square feet per parcel, the Applicant also requested an administrative adjustment, under Puyallup Municipal Code (PMC) 20.86.005, to reduce the size of one of the two proposed lots (Lot 1) to approximately 29,875 square feet. Lot 2 would be approximately 35,518 square feet, satisfying minimum lot size requirements of the RS-35 zone. *Exhibit C-1, Staff Report, page 3; Exhibit C-2.*
2. The municipal code provides that the City of Puyallup Community Development Director (Director) may grant an administrative adjustment to decrease required lot area by no more than 20 percent, under PMC 20.86.005(1), so long as written findings are provided supporting each of the following conclusions:
  - 1) The adjustment shall not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties

*Findings, Conclusions, and Decision*  
 Puyallup Hearing Examiner  
 Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116

- within a radius of 1,000 feet or within the boundaries of the same subdivision, whichever is greater (i.e., “vicinity”); and
- 2) The granting of the adjustment will not be detrimental to the public health, safety, comfort, convenience and general welfare, and will not adversely affect the established character of the surrounding neighborhood or will not be injurious to the property or improvements in the vicinity as defined in subsection (1) of this section; and
  - 3) The adjustment is necessary because of special circumstances relating to the size, shape, topography, unusual natural features, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity as defined in subsection (1) of this section. Such circumstances shall not be the result of some action caused by the applicant and/or previous property owners.

*PMC 20.86.010.*

3. The Director also has the authority to waive the requirement that the third conclusion, related to special circumstances, be met, so long as the applicant is only seeking a single adjustment, has not requested an adjustment for any other properties within a radius of 1,000 square feet or within the boundaries of the same subdivision, the property is zoned for residential development, and any new structures enabled by the adjustment would be designed to be compatible with other residential structures in the immediate vicinity.

*PMC 20.86.012.*

#### Initial Determination

4. On November 22, 2016, the Director made an initial determination, under PMC 20.86.020, approving the administrative adjustment. The initial determination included findings noting that:
  - Within a 1,000-foot radius of the property, the City has previously approved seven administrative adjustments for properties to deviate from various development standards.
  - Other properties within the vicinity of the project would have the same opportunity to apply for an administrative adjustment to reduce lot area, subject to the same findings in PMC 20.86.010.
  - The neighborhood is well established with varying lot sizes. The majority of lots within the vicinity appear to meet the minimum required lot area. A number of lots, however, are below the minimum 35,000 square foot lot area.
  - The requested adjustment would only reduce the required lot area and does not include deviations from the required setbacks for the lot. The building envelope for new structures on the new lot would be required to meet the required setbacks of the RS-35 zone.

*Findings, Conclusions, and Decision  
Puyallup Hearing Examiner  
Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116*

- The proposal meets the requirements for waiver under PMC 20.86.012 and, accordingly, special circumstances need not be addressed.

*Exhibit C-4.*

5. The City of Puyallup (City) notified owners of all adjacent properties of the Director's initial determination, as required by PMC 20.86.020. In response, the City received several comments opposing the adjustment. Robert and Deborah Drugge wrote that they strongly oppose the project because there are protective covenants and restrictions in the Rodesco Estates neighborhood requiring minimum lot sizes of 35,000 square feet, the proposal would negatively impact property values, and there are existing stormwater problems that would be exacerbated by additional development. Keith and Colleen Houghton expressed concerns about a precedent being set that would allow other properties in the neighborhood to be subdivided and about the potential impact this would have on neighborhood aesthetics and property values. Dawne Carlisle provided comments similar to the Drugges and Houghtons and, further, expressed the belief that the initial determination erred in stating that there are several lots within the Rodesco Estates neighborhood that do not meet the required 35,000 square foot minimum lot size. Wayne and Tami Coudriet also wrote in opposition to the proposal, specifically noting that the proposal would not fit with the established community character of the Rodesco Estates neighborhood, would set a precedent allowing others to subdivide, and would increase water-related problems for adjoining properties. *Exhibit C-5.*

#### Final Administrative Decision

6. PMC 20.86.025(1) requires the Director to reconsider an initial determination if written objections have been received. Accordingly, the Director placed making a final decision on the administrative adjustment on hold, requested additional information from the Applicant, and performed additional project review. On November 14, 2017, the Director issued a final decision approving the administrative adjustment. The decision notes:
  - Although staff understands concerns regarding potential impacts to property values, impacts to property value are not a part of the code-specified approval criteria related to administrative adjustments. In addition, the City does not assess property values, and staff does not have empirical information addressing potential impacts to property value in relation to a proposal of this type.
  - Although several concerns about community character have been raised, one of the parcels (Lot 2) would meet the required lot size for the zoning district, and the other (Lot 1) contains the existing single-family residence and would only have its lot size reduced by approximately 15 percent. Within 1,000 feet of the property, six properties have been granted administrative adjustments. In addition, to address concerns regarding the potential impacts of a new building interfacing with adjacent properties to the north and west, the approval would be conditioned on the Applicant retaining existing trees and landscaping and/or providing

*Findings, Conclusions, and Decision*  
*Puyallup Hearing Examiner*  
*Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116*

additional landscaping to screen the new improvements to the greatest extent feasible.

- Because concerns were raised about stormwater in response to the initial determination, the City required the Applicant to provide a critical areas report prepared by a qualified biologist to determine if an existing pond on-site should be regulated as a critical area. The report, prepared by John Comis Associates, LLC, determined that the pond should not be regulated as a critical area and, instead, should be treated as a landscape amenity. The report underwent multiple rounds of review by the City's third-party consultant, who agreed with this determination. During further short plat review, however, the Applicant would be required to comply with current stormwater regulations, including addressing any increased stormwater runoff from additional development.
- Code Compliance Officer Shane Pieren visited the site to investigate potential fill work on the subject site. Although some fill work had clearly occurred, Mr. Pieren determined that the amount of fill did not trigger the need for a grading permit.
- Based on the analysis provided in the initial determination and the additional analysis performed, the adjustment would not constitute a grant of special privilege inconsistent with other properties within a radius of 1,000 feet, and the adjustment would not be detrimental to the public health, safety, comfort, convenience, and general welfare, or affect the established character of the neighborhood.

*Exhibit C-6.*

#### Appeal

7. On November 27, 2017, Robert and Deborah Drugge (Appellant) timely appealed the Director's final decision. The appeal argues that: the adjustment would alter the community character of the neighborhood and, although other administrative adjustments have been granted in the past, none has been used to short plat an existing lot; the City lacks the legal authority to allow a reduction in lot size below 35,000 square feet because lots within the Rodesco Estates neighborhood are encumbered by restrictive covenants that do not allow such a reduction;<sup>1</sup> and the final decision does not adequately address the impact of the development on water runoff and septic systems on adjacent properties.  
*Appeal (November 27, 2017).*
8. In response to the appeal, the City filed a Motion to Suppress Arguments, arguing that the City "is not a party to the Protective Covenants and Restrictions for Rodesco Estates" and that potential "stormwater/septic impacts are reviewed as part of the associated short plat

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<sup>1</sup> Section 22 of the "Protective Covenants and Restrictions for Rodesco Estates, Division I & II," states that "No Lot in Rodesco Estates may be further subdivided to a size of less than 35,000 square feet before January 1, 1999." The Appellant contends that a provision in Section 1 of the covenants negates the clause in Section 22 relating to January 1, 1999. *Exhibit A-2; Response to City's Motion to Suppress Arguments (January 4, 2018).*

application” and need not be considered under the criteria for an administrative adjustment. *City’s Motion to Suppress Arguments (January 4, 2018)*. In response to the motion, the Appellant argued that PMC 20.86.010(2) addresses the established character of a particular neighborhood and that the covenants in the neighborhood “are a strong driver of the character.” *Response to City’s Motion to Suppress Arguments (January 4, 2018)*. The Appellant also argued that stormwater and septic impacts could be detrimental to the public health, safety, comfort, convenience, and general welfare and, accordingly, should be addressed at the hearing. *Response to City’s Motion to Suppress Arguments (January 4, 2018)*.

9. The Hearing Examiner issued a decision on the City’s motion on January 16, 2018, ruling that the City is not a party to the protective covenants and restrictions governing Rodesco Estates and, accordingly, that whether the administrative adjustment violates such covenants would not be appropriately before the Hearing Examiner. The Hearing Examiner noted, however, that PMC 20.86.010 discusses community character and that it would be appropriate for the Appellant to present relevant evidence on how an administrative adjustment allowing for smaller lot size would adversely impact such character. In addition, the Hearing Examiner ruled that it would be appropriate for the Appellant to present evidence showing how stormwater or septic impacts would impact public health, safety, or general welfare. *Decision on City’s Motion (January 16, 2018)*.

#### Appeal Hearing

##### *Appellant Witnesses*

10. At the open record appeal hearing, Appellant Robert Drugge testified that he opposes the proposal for three basic reasons: (1) granting the administrative adjustment would constitute a special privilege within the neighborhood; (2) it would adversely affect the established character of the neighborhood; and (3), as an adjacent property owner, he has specific concerns about potential stormwater impacts from the proposal. Mr. Drugge argued that 90 of 91 lots within Divisions 1 and 2 of the Rodesco Estates neighborhood meet the minimum lot size requirement of 35,000 square feet, and the only lot that does not meet this requirement is vacant. Accordingly, allowing the reduction in lot size would constitute a special privilege and would set a precedent for the future that would have detrimental impacts on property values and neighborhood character. He also stressed that, although the City has allowed several administrative adjustments in the past, those adjustments related to setbacks, and none of them led to the short platting of a lot and the addition of an entirely new, second residence on an existing parcel. Mr. Drugge noted that PMC 20.20.020 limits maximum development density at one dwelling unit per gross acre, and he does not understand how the proposal meets this standard. He also explained that, since the Appellant began working on the proposal, there have been increasing issues with stormwater on his property and that he is concerned that additional development would exacerbate these problems. Mr. Drugge stated that it is possible the Applicant has installed a drain or culvert that is releasing water toward his front yard and that this issue has not been adequately addressed by the City. Finally, Mr. Drugge noted

that one way to think about neighborhood character is to ask members of the neighborhood. Here, everyone in the neighborhood opposes the project. *Testimony of Mr. Drugge.*

11. Colleen Houghton testified that nobody has built a new house on a new property in the neighborhood in years; the Applicant could rebuild a home on the property to better suit the Applicant's needs. She is concerned about the precedent that the proposal would set and about increased traffic in the neighborhood. *Testimony of Ms. Houghton.*
12. Dawne Carlisle testified that water is a significant issue in the area and should be further addressed. She noted that, like Mr. Drugge, her property (which sits kitty-corner to the northeast of the proposal site) experiences issues with stormwater runoff. In the summer, especially, standing water causes problems for health and safety because it serves as a breeding ground for mosquitoes. Ms. Carlisle is concerned that additional development would increase such problems. She also noted that, like all other property owners in the Rodesco Estates neighborhood, she purchased her property with the understanding that it could not be subdivided because of the protective covenants and that, in allowing the Applicant to subdivide the property, the City would be sanctioning the breaking of that promise. Following Ms. Carlisle's testimony, Mr. Drugge emphasized that there is not an active homeowners association for Rodesco Estates because everybody has abided by the restrictive covenants for over 20 years and nobody else sought approval to short plat an existing lot. *Testimony of Ms. Carlisle; Testimony of Mr. Drugge.*
13. Wayne Coudriet testified that stormwater problems for adjacent properties have increased since the Applicant began working on the proposal. He stated that it is like the ground never dries out anymore, and this was never a problem in the past. Mr. Coudriet also noted that, over 20 years ago, he sought approval to build a garage on his property with three bays, but that request was denied because the City did not feel the proposal would fit with the established character of the neighborhood. If a larger garage was not allowed then, he does not understand how an entirely new house could be approved now. *Testimony of Mr. Coudriet.*
14. Dick Boyle testified that he is a realtor who has lived in the neighborhood for several years. At one point, Mr. Drugge asked him about a proposal from the Applicant to purchase a 10 square foot strip from the Drugge property that would allow the Applicant's property to be subdivided, presumably without need of an administrative adjustment or variance. He advised Mr. Drugge against the sale because subdividing the Applicant's property would have negative impacts on adjacent property values and on the property values of the neighborhood in general. Mr. Boyle also testified that he is frustrated that, despite living a few houses down from Mr. Drugge, he did not receive any notification about the proposed administrative adjustment or short plat. He believes all the residents in the neighborhood should have been notified and included in the process because all the neighbors would oppose the proposal. *Testimony of Mr. Boyle.*

15. Jim Elder testified that he has lived in the neighborhood for 36 years and is concerned that the proposal would affect neighborhood character. He believes the neighborhood covenants should be upheld. *Testimony of Mr. Elder.*

*City Witnesses*

16. In response to a question from the Hearing Examiner, Associate Planner Kendall Wals testified that, in assessing the proposal, the City looked at properties within a radius of 1,000 feet of the subject property, as opposed to all properties within the same subdivision. She explained that the City looked at available GIS data and believed that reviewing properties within a 1,000-foot radius would be comparable to reviewing properties within the entire subdivision. Ms. Wals then reiterated the analysis presented in the City's final determination, stressing that other lots could go through the same administrative adjustment process and that six other lots in the 1,000-foot vicinity have received administrative adjustments – five for setbacks and one for minimum lot size. Three of the administrative adjustments were for lots in the Rodesco Estates neighborhood. She noted that Chapter 20.86 of the municipal code does not differentiate between administrative adjustments for setbacks or lot size and does not require consideration of whether an administrative adjustment would allow a lot to be subdivided in the future. In response to the concern about notice raised by Mr. Boyle, Ms. Wals explained that the municipal code does not require that notice be provided for short plats and that it only requires notice be provided to adjacent property owners, under PMC 20.86.020, for administrative adjustments. *Testimony of Ms. Wals.*
17. Community Development Director Tom Utterback testified that the City takes public comments and stormwater concerns seriously and that stormwater impacts would be more fully addressed during the short platting process if the administrative adjustment were upheld. He acknowledged that, based on testimony delivered at the hearing, it would be appropriate for the City to visit the proposal site again to determine whether any code compliance issues related to water runoff have arisen. In response to Mr. Drugge's comments about PMC 20.20.020, Mr. Utterback stated that that is a secondary development standard for new developments and would not be applicable to this proposal. He also stated that, from his recollection, there have been instances in the past throughout the City where an administrative adjustment is granted that would then allow an applicant to subdivide a property. He noted that the Comprehensive Plan encourages in-fill development, where appropriate, so it is not unheard of to have an applicant use the administrative adjustment process in furtherance of a short plat application. Mr. Utterback stressed that, in reviewing whether the proposal would be detrimental, he focuses on whether the proposal would cause harm to adjacent properties. He did not believe this proposal would have enough impact to cause harm, especially as conditioned by the final decision. *Testimony of Mr. Utterback.*

18. Civil Engineer Alicia Floyd testified that stormwater impacts from the proposal have not yet been addressed in detail because this would occur during the short platting process (which is currently on hold). She stressed that, under requirements of the municipal code and the stormwater manual, the Applicant would need to show that the proposal would not impact adjacent properties. Ms. Floyd also stated that she would be happy to visit the site with the City's Code Enforcement Officer to determine if there are any engineering concerns related to work that the Applicant has completed on the property during the pendency of permit review. *Testimony of Ms. Floyd.*

#### *Applicant Witnesses*

19. Keith Techmeier testified that he believes the proposal meets the criteria for the administrative adjustment and should be approved. He reiterated the arguments made in the City's final decision. On cross-examination, Mr. Techmeier acknowledged that some kind of stormwater related system was installed in 2015. *Testimony of Mr. Techmeier.*
20. Kyeung Techmeier testified that their attempts to purchase a portion of the Drugge property occurred very early in the process and have no bearing on the current proposal. *Testimony of Ms. Techmeier.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has authority to hear appeals of a Community Development Director adjustment of a decrease in required lot area as set forth in Chapter 20.12 PMC. The Hearing Examiner may affirm, modify, or deny the Director's decision or may remand the matter to the Director for further review in accord with the Hearing Examiner's decision. *Chapter 2.54 PMC; PMC 20.86.025.*

#### Review Authority

The Hearing Examiner's duty is to review the entire record before him to determine whether an appellant has met his or her burden of proving that the City's decision was erroneous. To properly review the City's action, the Hearing Examiner must decide what facts are important to make a decision, determine those facts with reference to specific exhibits or testimony, draw conclusions from those facts, and make a decision based on those conclusions. *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26 (1994).

The Hearing Examiner must accord substantial deference to the City's interpretation of its own ordinances. *RCW 36.70C.130(1)(b); Nw. Sportfishing Indus. Ass'n v. Washington Dept. of Ecology*, 172 Wn. App. 72 (2012); *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180 (2002). The Hearing Examiner reviews the City's decision to determine if it is clearly erroneous, after allowing for such deference as is due the construction of a law by the agency with expertise, or that the decision is not supported by evidence that is substantial when viewed in light of the whole record. *See CCC 26.10.620(2)(b)*. Under the "clearly erroneous" standard of review, the Hearing Examiner examines the entire record in light of the policy set

*Findings, Conclusions, and Decision*  
*Puyallup Hearing Examiner*  
*Drugge Administrative Appeal, Nos. HEA-2017-03 & P-15-0116*

forth in the ordinance and reverses the decision only if he has a definite and firm conviction that the City made a mistake. *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751 (2002). When applying the clearly erroneous standard, the Hearing Examiner may not substitute his own judgment for the judgment of the City. *See Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 202 (1994).

#### Conclusion Based on Findings

**Additional analysis is necessary to determine whether the proposal complies with the requirements for an administrative adjustment under PMC 20.86.010(1) and (2).** At the open record hearing, it became clear that, in making both the initial determination and the final decision on the administrative adjustment, staff reviewed properties within a 1,000-foot radius of the subject property to determine whether the adjustment would constitute a grant of special privilege. The municipal code, however, requires a finding showing that the adjustment would not constitute a grant of special privilege “inconsistent with the limitations upon uses of other properties within a radius of 1,000 feet *or within the boundaries of the same subdivision, whichever is greater.*” *PMC 20.86.010(1) (emphasis added)*. It is axiomatic when interpreting statutes or ordinances that “all the language used is given effect, with no portion rendered meaningless or superfluous.” *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309 (2010). Here, by including language about the boundaries of the same subdivision in PMC 20.86.010(1), the Puyallup City Council presumably intended that impacts from administrative adjustments be considered on a neighborhood-wide level, where appropriate. It is unclear how much of the Rodesco Estates neighborhood was considered in analyzing the proposal. Mr. Drugge provided information and testimony describing the neighborhood as having 91 lots. It seems unlikely that, with so many lots—especially lots that are generally at least 35,000 square feet in size—that the 1,000 square foot radius used was larger than the neighborhood itself. Accordingly, additional analysis is necessary to determine whether the proposal would constitute a grant of special privilege within the Rodesco Estates neighborhood.

In addition, several concerns were raised about existing stormwater impacts from work that has occurred on the Applicant's property in the last year or two. On cross-examination, the Applicant acknowledged that some form of work related to stormwater occurred on the property in 2015. Nothing in the record suggests that this work was done with the benefit of permits. Several property owners testified that water problems on their property have recently been exacerbated. Prior to making a final determination on the administrative adjustment, it is appropriate for the City to review whether work that has occurred on the Applicant's property is in compliance with the municipal code and, further, whether such work poses a potential risk to public health, safety, or welfare under PMC 20.86.010(2).

Finally, several concerns were raised about whether the proposal would adversely affect the established character of the surrounding neighborhood under PMC 20.86.010(2). Many of those with concerns testified that the protective covenants and restrictions related to Rodesco Estates provide evidence about the community's character. The Hearing Examiner concurs. Although the City is not a party to the protective covenants—and whether Section 22 of the covenants is

enforceable is beyond the scope of this decision or the City's own authority<sup>2</sup>—private agreements, like homeowners association rules or protective covenants, do provide evidence of community character that the City may wish to consider in determining whether a proposal would create adverse impacts. *Findings 1 – 20.*

### DECISION

Because additional analysis is needed, on whether the administrative adjustment would constitute a grant of special privilege inconsistent with the limitations upon uses of other properties within the Rodesco Estates subdivision and on whether the proposal would pose a risk to the public health, safety, comfort, convenience, and general welfare or the established character of the surrounding neighborhood, the final administrative decision is **REMANDED** to the City of Puyallup Community Development Director for further consideration, consistent with this decision.

Decided this 13<sup>th</sup> day of February 2018.



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Andrew M. Reeves  
Hearing Examiner  
Sound Law Center

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<sup>2</sup> See, e.g., *Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 118 (2005) (the “City has correctly conceded that it ‘has no authority’ to enforce or invalidate restrictive covenants”).