

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

In the Matter of the Appeal of)	NO. SEPA-2015-02323
)	
)	
Susan Wilkins)	
)	
)	
)	
of the December 28, 2015)	
Determination of Non-Significance)	ORDER SETTING HEARING
on the “Zakhareyev Comprehensive)	AND PRE-HEARING DOCUMENT
Plan Amendment”)	EXCHANGE SCHEDULE
_____)	

On February 17, 2016, the Redmond Hearing Examiner convened a pre-hearing conference in the above captioned appeal. The following persons participated in the conference:

For Appellant:
Susan Wilkins, Appellant

For the City:
James Haney, City Attorney

For the Applicant:
Mr. Zakhareyev

During the pre-hearing conference, the parties discussed pre-hearing document exchange, hearing procedures, and scheduling.

Scope of Issues on Appeal

There was some discussion of what was the appropriate scope of content for the appeal. Noting that the Technical Committee was acting in the capacity of making a recommendation to Planning Commission in a Type VI application, the Appellant asserted that RZC 21.70.060.F restricts the Technical Committee to one of the following recommendations: 1) approval, 2) approval with conditions or with modifications, or 3) denial. She asserted that the Technical Committee instead recommended denial with modifications, which she called a fourth option and argued is not contemplated in the code and therefore not allowed. She contended that such a process would allow changes to be made to the zoning code while circumventing the public participation process that would otherwise be required of zoning code amendments proposed by the City. Noting that her arguments and concerns as articulated in the appeal are strictly procedural, but also that she was not able to voice her concerns over the content of the Technical

Committee's proposed modification at a recent Planning Commission meeting, the Appellant asked when she would have an opportunity to challenge the environmental impacts she foresees from the proposed modification if not in the instant appeal proceeding.

The City Attorney contended that the scope of the instant appeal should be restricted to the procedural issues identified in the SEPA appeal filed by the Appellant, because the City's hearing examiner does not have authority to consider the zoning and Comprehensive Plan amendments themselves.

The City Attorney noted that there was a coming Planning Commission meeting at which the future process of the proposed denial with modifications would be more fully considered. It is possible that the instant appeal could be mooted by an action of the Planning Commission that denied the modification and adopted the recommended denial of the proposed Comprehensive Plan Amendment. Nevertheless, he requested that the instant appeal be scheduled to proceed in the event that the outcome of the Planning Commission's proceedings is otherwise.

The Applicant requested that the instant tribunal direct the Planning Commission to go against the recommendation of the Technical Committee to deny the proposed amendment and instead adopt the proposed changes, or, in the alternative, to wait and see if the Planning Commission or City Council decide ultimately to adopt the proposed amendment. The hearing Examiner lacks such authority. The City Attorney noted that the instant SEPA appeal must be decided before the City Council would be able to act on the proposed amendment one way or another.

The Appellant clarified that her appeal pertains to the procedural issues spelled out in her appeal document with the added request that the Examiner consider requiring the Technical Committee to reissue the DNS with the Committee's proposed modification as a SEPA addendum with the attendant public comment process.

The City Attorney indicated that he is likely to submit a dispositive motion on jurisdictional grounds.

Having discussed the scope of the appeal and reached agreement to the extent possible, the parties agreed to the following schedule for the remainder of these proceedings.

The parties agreed that, due to the nature of the issues, the hearing should not take more than a couple hours to complete.

Anticipated Order of Proceedings at Hearing

At the hearing, the following is the anticipated order of business. The Examiner may change the following order of proceedings on motion by a party or at her own discretion.

- Introductory remarks by the Examiner calling the hearing to order and explaining the procedures to be followed.
- Appellant will present witness testimony and introduce exhibits. Each Appellant witness will be subject to cross examination by the Applicant and by the City.

- The City will then present witnesses and exhibits, with each City witness subject to cross examination by the Appellant and the Applicant.
- The Applicant may present a case. Each Applicant witness will be subject to cross examination by the City and by the Appellants. Applicant will make their final argument at this time.
- The City can present rebuttal evidence, if any, and make their final argument.
- The Appellants can present rebuttal evidence, if any, and make their final argument.
- Note there is no public comment period during the open record appeal hearing. Only parties called as witnesses will be allowed to testify, and all will be subject to cross examination.
- Conclusion of the hearing - housekeeping, post-hearing scheduling (if any), and identification of decision due date.

Order

Hearing Scheduling

1. The DNS appeal hearing is scheduled in the Redmond City Council Chambers on April 5, 2016 at 11 am.
2. Note there is no public comment period. Only persons called as witnesses by a party may testify during the appeal.

Representation

3. Any party may retain counsel for these proceedings. In the event this occurs, the attorney shall submit a notice of appearance as soon as possible. Note: the schedule agreed to will generally not be altered to accommodate counsel retained after the pre-hearing conference.

Motions

4. Parties may submit dispositive motions before close of business on March 4, 2016.
5. Should any dispositive motions be submitted, the other parties shall have until March 9th to respond, and the movant shall have until March 11th to reply, if desired, to any response filed.
6. The Examiner will rule on dispositive motions before close of business on Tuesday March 16th.

Pre-Hearing Document Exchange

7. All parties shall submit Witness and Exhibit Lists (explained below) not later than March 21, 2016.¹

¹ Note: Because there was ample time before the April 5th hearing date, the witness and exhibit list submittal deadline has been extended to allow the parties enough time to wait until after the ruling on the City's anticipated dispositive motion before preparing the lists.

8. Should witnesses and exhibits disclosed on March 21st cause any party to offer additional witnesses or exhibits, the party shall disclose the additional witnesses and/or exhibits at the earliest opportunity with an Addendum Witness and/or Exhibit List.
9. On or before March 28, 2016, all parties shall submit their exhibits, including expert witness credentials if any. The City's Staff report on the appeal shall be included in the City's exhibits.
10. Pre-hearing legal briefing, if any, shall be submitted on March 30, 2016.
11. Deadlines for post-hearing briefing, if any, shall be established on the record at hearing.

Submittals - Note the following requirements:

12. **Witness lists** shall specify:
 - Name and relationship to appeal (appellant, neighbor, expert, etc.)
 - If offered as expert, a brief summary of credentials (Transportation Engineer, Wetland Biologist, etc)
 - A concise summary of the content of anticipated testimony (Addressing traffic and parking, etc)
13. **Exhibit lists** shall specify:
 - Title and date of document - please give each exhibit a name and date
 - If correspondence, to/from parties and date (e.g., "email from ___ to ___ dated ___")
 - If photographs, by whom taken, when, and from where taken
 - If other materials, identify the source
 - Brief summary of content
14. For the purpose of satisfying the deadlines above, the witness list, exhibit list, briefing, and the exhibits themselves may be exchanged via email. On or before the day of hearing, each party shall provide a complete paper set to each other party and two sets to the Examiner (one for the official record, one for working copies), or four total sets of hard copies.
15. Exhibit and witness lists shall be prepared as Word documents, no tables or columns. A Word version of the documents shall be emailed to the Office of the Hearing Examiner by the date of the hearing at the email address below.
16. All submitted documents will be scanned and placed on the Redmond Hearing Examiner web page available at the City's website. To be sent an email link to the Hearing Examiner page, send a request by email to the Hearing Examiner Clerk at the email address below.
17. Note: Witness list and exhibit exchange is intended as a good faith effort to disclose all evidence supporting each party's case in order to promote efficiency during the proceedings. However, this matter is an open record appeal hearing, which means new/ previously undisclosed evidence may be offered by any party during their presentation up

to the close of the record. Should new witnesses and/or exhibits cause undue surprise to any party at hearing, the record may be held open to allow written rebuttal after adjournment.

18. To be considered timely, submittals shall be sent via email not later than 4:00 pm on the due date identified. All submittals shall be directed to the attention of the Office of the Hearing Examiner at the email address below. The Clerk's office will circulate all communications to all parties and the Examiner.

Office of the Hearing Examiner
Attention Cheryl Xanthos, Deputy City Clerk
cdxanthos@redmond.gov
425.556.2191 ph

19. In order to avoid *ex parte* contact: At no time should any party email the Examiner directly absent exigent circumstances, and all parties should be cc'd on such urgent communications.

20. Clarifying questions about this order and any other procedural questions may be directed to the Examiner via email to the same contact information above.

Ordered February 19, 2016.

By:



Sharon A. Rice
Redmond Hearing Examiner