

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

In the Matter of the Appeal of	)	No. APL LAND-_____
	)	
	)	
<b>Rory and Donna Veal</b>	)	
	)	
Of the October 17, 2019	)	<b>ORDER SETTING HEARING AND</b>
Administrative Decision file number	)	<b>PRE-HEARING SCHEDULE</b>
LAND-2019-00814 regarding their Real	)	
Property known as	)	
<u>Tax Parcel Number 352605-9123</u>	)	

On October 31, 2019, Rory and Donna Veal (Appellants) timely filed an appeal of the October 17, 2019 administrative decision file number LAND-2019-00814 regarding their real property known as Tax Parcel Number 352605-9123, which currently serves as a drainage feature. The appeal alleges various errors of factual analysis, code interpretation, and procedure.

The appeal affects only the subject property. Because the issues are concisely spelled out in the appeal submittal, the parties agreed (via email) that no in person pre-hearing conference was required, and agreed to pre-hearing exchange of documents. Due to availability constraints by the examiner, the parties, and the year-end holiday season, the necessary parties were not able to agree to a mutually available hearing date before February 10, 2020. After polling the parties on potential pre-hearing document exchange dates, the pre-hearing exchange schedule below was agreed to via email.

**Confirmation of Alleged Errors in Notice of Decision**

The appeal submitted by the Appellants enumerated the following (abbreviated, paraphrased) errors in the notice of decision:

1. The City failed to consider the Appellants’ factual evidence in their interpretation request;
2. The City disregarded the legal analysis in the Appellants’ request for interpretation;
3. The City’s analysis of the proposal’s compliance with Comprehensive Plan goals and policies was “cherry picked” against the Appellants’ interests; and

4. The City engaged in unlawful procedure by: a) Improperly excluding certain issues raised in the interpretation request, specifically finding the interpretation was not governed by RZC 21.76.070.D.2 but rather by the terms of a private agreement between Appellants and the City; and b) failing to use generally recognized principles of ordinance/statutory construction, as required by RZC 21.76.070.D.5.

The relief requested was that the decision be reversed and remanded to the City with instruction to issue a new administrative interpretation consistent with the Appellants' interpretation request.

If any party requires further clarification or refinement of these alleged errors, a written request detailing desired clarification should be circulated to all parties as soon as possible via the Hearing Clerk.

### **Pre-Hearing Motions for the Disposition of Issues**

In response to queries, the parties did not indicate that there would be pre-hearing dispositive motions filed. However, the schedule circulated and not objected to by the parties made provision in case of later-desired motions.

### **Anticipated Order of Proceedings at Hearing**

In appeals of land use decisions, it is the Appellant who bears the burden of proof. This means it is the Appellant's obligation to show through evidence and argument that the City's decision is in error. Because the Appellant has the burden of proof, they speak first and last. 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.

- Appellant 's case, including witness testimony and introduction of exhibits. Each Appellant witness will be subject to cross examination by the City.
- The City will then present witnesses and exhibits, with cross examination by the Appellant.
- Relevant rebuttal evidence would be allowed in the same order.
- Closing statements would follow in reserve order, first the City and then the Appellant, unless the parties desire/the undersigned requests that closing argument be made in writing after the hearing.
- Conclusion of the hearing - housekeeping, confirmation of post-hearing schedule, if any, and announcement of decision issuance date.
- Note: there is no public comment period during the open record appeal hearing. Only persons called as witnesses by the parties will be allowed to testify, and all will be subject to cross examination.

**ORDER:**

*Hearing*

1. The hearing in this matter is scheduled for **10:00 am on February 10, 2020** in the Redmond City Council Chambers, with breaks as appropriate. The hearing will complete that day.
2. The hearing will be limited to argument and evidence addressing whether or not the March 6, 2019 notice of decision is supported by evidence and consistent with applicable regulations of the City. Offers of proof on matters outside the City hearing examiner's authority (including but not limited to constitutional issues) will be allowed to enable parties to complete their records.

*Dispositive Motions*

3. Dispositive motions addressing the scope of the proceedings, if any, shall be submitted by 4:00 pm on January 10, 2020.
4. Parties shall have until 4:00 pm on January 17, 2020 to submit simultaneous responses to dispositive motions submitted. No replies to responses are invited; follow up argument may be addressed in pre-hearing briefs.
5. The undersigned shall rule on dispositive motions by January 22, 2020.

*Pre-Hearing Document Exchange Deadlines*

6. In order to facilitate preparation and efficient use of hearing time, the parties shall submit Witness and Exhibit Lists (explained below) not later than January 27, 2020.
7. On or before 4:00 pm February 3, 2020, the parties shall submit their exhibits (including expert witness credentials if any). The City exhibits shall include the City's staff report.
8. Pre-hearing legal briefing, if any, shall also be exchanged on February 3, 2020 by 4:00 pm.

*Submittals* – Please note the following requirements:

9. **Witness lists** shall specify:
  - Name and relationship to appeal (appellant, neighbor, expert, etc.)
  - A concise statement of the content of anticipated testimony (Addressing traffic and parking, etc)
10. **Exhibit lists** shall specify:
  - Title and date of document - please give each exhibit a name and date
  - If correspondence, the title shall include 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

11. Exhibit and witness lists shall be prepared as Word documents, no tables or columns, simply numbered 1 through X.<sup>1</sup>
12. For the purpose of satisfying the deadlines above, witness lists, exhibit lists, briefing, and the exhibits themselves shall be exchanged via email. On or before the day of hearing, each party shall provide a complete paper set to each other party and one set to the Hearing Clerk (Examiner working copies). Note, parties typically also want a copy for their own witnesses.
13. The parties are encouraged to coordinate after exhibit list exchange to eliminate any duplicate exhibits.

*Further Communication Before the Hearing*

14. All email submittals shall be emailed to the other party and to the Office of the Hearing Examiner at the email addresses below. The Hearing Examiner Clerk will forward all submittals to the Examiner.

Examiner:

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

Appellant Representation:

Duncan Greene and Brent Carson  
dmg@vnf.com  
brc@vnf.com

City:

James Haney  
jhaney@omwlaw.com

If any party requires others to be added on the pre-hearing notification email distribution list, or if any wishes to be removed, please inform all parties above at the soonest opportunity by email.

15. 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, the appeal is an open record appeal hearing. 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.

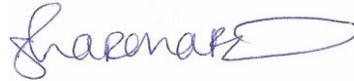
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<sup>1</sup> In the decision document each party's exhibits will be assigned a prefix - V for Appellants Veal and C for City; however, submitted exhibit lists should just be numbered without prefix.

16. In order to avoid *ex parte* contact: At no time should any party contact the Examiner directly absent exigent circumstances, and in the event of exigent circumstances all parties should be cc'd on email communications. 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** January 8, 2020.

By:



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Sharon A. Rice  
Redmond Hearing Examiner