

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

In the Matter of the Appeal of)	No. APL LAND-_____
)	
)	
Andorra Ventures LLC)	
)	
Of the April 10, 2020 approval of)	ORDER SETTING HEARING AND
BLDG-2020-01804 which authorized tenant)	PRE-HEARING SCHEDULE
improvements to an existing commercial)	
space addressed as)	
<u>7829 Leary Way, Suite 100, Redmond</u>)	

On April 24, 2020, Sean Miller on behalf of Andorra Ventures LLC (Appellant) timely filed an appeal of the April 10, 2020 approval of BLDG-2020-01804, which authorized the construction of a new demising wall in an existing building to create retail tenant space and upgrade the restroom for ADA compliance; a total area of work approved is 1,408 square feet. The appeal alleges the following errors.

- A. The Decision violates RZC 20D.130.10-030(6) and RZC 21.40.010.E(6), which prohibit vehicles exiting from parking facilities from backing into streets. The applicant’s parking facility is designed such that to exit, vehicles must back into Cleveland Street – a very busy thoroughfare.

- B. The City failed to follow the criteria and requirements of RZC 21.10.030C(8) and 20D.130.10-010(4) because the traffic that will be generated by the change in use of the building to marijuana sales will generate far greater volumes than the prior use, and the existing parking is not sufficient to accommodate such volumes.

- C. The City’s allowed use of the site for retail marijuana sales violates the buffer requirements under RZC 21.41.040.C. The site is within the required 1000’ park-with-playground buffer (per google maps 479’) from the Downtown Redmond Park and Splash Pad Play Area (which, per the City’s website, is “Fun for the kids!”)

The Appellant requested the following relief:

Reverse the City’s decision to approve the application and remand the same for processing consistent with applicable codes, including without limitation parking requirements and retail marijuana buffer requirements.

Pre-Hearing Conference

A virtual pre-hearing conference was conducted via Microsoft Teams on May 22, 2020. The following persons participated in procedural discussions with the Redmond Hearing Examiner:

For Appellants:

Vicki Oricco, Attorney

For City:

Jim Haney, City Attorney

Cameron Zapata, Planner

Carol Helland, Interim Director of Planning and Community Development

For Applicant:

Duncan Manville, Attorney

Logan Bowers, Applicant, Plausible Products d/b/a Hashtag

Jerina Pillert, Applicant

Counsel for all three parties confirmed that they know of no other necessary parties to the proceedings.

Counsel for the City and the Applicant declined the opportunity to request clarification of the errors alleged in the appeal.

Pre-Hearing Motions for the Disposition of Issues

All three parties indicated the intention to file dispositive motions addressing the scope of issues on appeal. Counsel for the Appellant inquired about the possibility of the Hearing Examiner issuing a stay of Applicants' operations on-site pending the outcome of the appeal. Ms. Oricco was invited to submit the request as a motion.

All persons on the call agreed that this appeal would be appropriate to be heard virtually, given the Stay Home, Stay Healthy order of the governor and out current inability to know with certainty when we would be able to convene in-person proceedings.

The parties agreed that the first regularly scheduled appeal calendar on which the matter could be heard is July 27, 2020. This date affords ample opportunity to have full motions, responses, replies, and ruling before exhibit and witness lists are required to be exchanged. Counsel for Appellant has previously scheduled motions and hearing the week before the June 22, 2020 hearing date, which June hearing date would not leave adequate time for motions.

Counsel for all three parties confirmed their availability for the July 27, 2020 hearing date but noted they need to confirm availability of witnesses.

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.

- Introductory remarks by the Examiner calling the hearing to order and explaining the procedures to be followed.
- Appellant 's case, including witness testimony and introduction of exhibits. Each Appellant witness will be subject to cross examination by the Applicant and the City.
- The Applicant will then present witnesses and exhibits, with cross examination by the Appellant and the City.
- The City will then present witnesses and exhibits, with cross examination by the Appellant and the Applicant.
- Rebuttal evidence, if any, would be presented in reverse order.
- Closing arguments would be heard first from the City, then Applicant, and finally from the Appellant; or the parties may request to make closing arguments in writing after adjournment.
- 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.
- Conclusion of the hearing - housekeeping, post-hearing scheduling (if any), and identification of decision due date.

ORDER:

Hearing

1. The hearing in this matter is scheduled for **10:00 am on July 27, 2020**. **It is anticipated that the hearing will be conducted virtually via Microsoft Teams or Zoom**. The hearing will proceed until completed, with breaks as appropriate.

Dispositive Motions

2. Dispositive motions addressing the scope of the proceedings, if any, shall be submitted by 4:00 pm on June 22, 2020.
3. Parties shall have until 4:00 pm on June 29, 2020 to submit simultaneous responses to dispositive motions submitted.
4. Parties shall have until 4:00 pm on July 3, 2020 to submit replies.
5. The undersigned shall rule on dispositive motions by July 7, 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 July 13, 2020.

7. On or before 4:00 pm July 20, 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 submitted on July 20, 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 auto numbered 1 through X.¹
12. For the purpose of satisfying the deadlines above, witness lists, exhibit lists, briefing, and the exhibits themselves shall be exchanged via email.
13. On the pre-hearing conference, the Examiner neglected to inquire whether the parties prefer to exchange paper copies of the record by mail or whether they prefer to work solely from electronically exchanged documents. Electronic exchange only would seem to make sense in this case, as everyone will be attending virtually and each witness will need their own copies of the documents for reference during testimony from different locations. **Counsel for each party should reply to this order by email indicating their preference.** A second Examiner Order will follow this email discussion on document exchange, memorializing the outcome and final determination for the record.
14. The parties are encouraged to coordinate after exhibit list exchange to eliminate any duplicate exhibits.

Further Communication Before the Hearing

15. If any party finds that July 27, 2020 cannot work for a necessary witness, they should submit a motion for continuance or date change as soon as possible. For the parties' information only, the next regularly scheduled appeal date is August 24, 2020.

¹ In the decision document each party's exhibits will be assigned a prefix - A for Appellants Andorra Ventures, H for Applicant Hashtag Cannabis, and C for City; however, submitted exhibit lists should just be numbered without prefix.

16. All email submittals in response to this Order shall be emailed to counsel for the other parties and to the Office of the Hearing Examiner at the email addresses below. The Hearing Clerk will forward all submittals to the Examiner.

Examiner:

Office of the Hearing Examiner, Attention Kalli Biegel, Deputy City Clerk
kbiegel@redmond.gov

Appellant:

Vicki Orrico,
orrico@jmmlaw.com

City:

James Haney
jhaney@omwllaw.com

Applicant:

Duncan Manville
dmanville@sbwllp.com

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

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, 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.
18. 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 May 22, 2020.

By:



Sharon A. Rice
Redmond Hearing Examiner