

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

In the Matter of the Appeal of)	No. APL LAND-2021-00035
)	
)	
Jim Jordan)	
)	
Of the December 18, 2020)	ORDER SETTING HEARING AND
State Environmental Policy Act)	PRE-HEARING SCHEDULE
Determination of Non-Significance)	
#SEPA-2019-01173 related to the proposed)	
Cascadia Montessori School Expansion at)	
<u>4239 - 162nd Avenue NE, Redmond</u>)	

On January 19, 2021, James Jordan (Appellant) timely filed an appeal of the December 18, 2020 State Environmental Policy Act (SEPA) determination of non-significance (DNS, SEPA-2019-01173) issued by the City of Redmond SEPA Responsible Official in the course of the City’s review of applications for conditional use and site plan entitlement permits to expand the existing Cascadia Montessori School located at 4239 - 162nd Avenue NE. Mr. Jordan is a neighbor to the subject property and had previously submitted comments during the review process.

Pursuant to Redmond Zoning Code (RZC) 21.70.190.E, hearings in appeals of SEPA threshold determinations shall be consolidated with the open record public hearing on the underlying action in which the SEPA determination was made. Thus, the SEPA appeal hearing and permit application hearings will be consolidated and heard in one proceeding.

A pre-hearing conference was convened on February 16, 2021 for the purposes of: identifying parties and representatives who must participate; clarification of issues on appeal if requested; identification of pre-hearing procedural issues; and calendaring the hearing and pre-hearing document exchange.

Parties

The following persons participated in the pre-hearing conference:

For Appellant:

- James Jordan, neighbor of the subject property, Appellant appearing pro se
- Mr. Jordan indicated that he filed the appeal and attended the conference on behalf of another neighbor, Darrell Newberry, and that he would not be seeking legal counsel.

For the City:

- Jim Haney, Legal Counsel
- Benjamin Sticka, Planner

Mr. Haney indicated that no other City witnesses needed to be consulted regarding scheduling.

For the Applicant:

- Ann Gygi, Legal Counsel
- Amit Ranade, Legal Counsel
- Philip Keeton, Applicant

Counsel for the Applicant indicated that no other parties needed to be consulted regarding scheduling.

Errors Alleged on Appeal

The appeal alleges various errors of procedure and factual errors, omissions, and misstatements in the SEPA environmental checklist and supporting documents, particularly with regard to on-site parking, off-site parking, and vehicle queuing as addressed in the project traffic study and other materials upon which the DNS was based. For relief, the appeal requested that further action on the proposal be tabled until more complete, acceptable traffic analysis is prepared.

Neither the City nor the Applicant requested clarification of the errors alleged in the appeal, and all parties agreed that the matter is appropriately considered in a virtual public hearing process.

Pre-Hearing Motions for the Disposition of Issues

In response to queries, counsel for the Applicant indicated an intent to file a motion to dismiss the appeal. The City indicated that it may be joining in the Applicant's motion but that it does not otherwise anticipate any pre-hearing motions. A schedule for motion, response, reply, and ruling was agreed to in the course of the conference and is included in the order below.

Anticipated Order of Proceedings at Hearing

The SEPA appeal will be heard first, to be followed by the permit application hearing. In appeals of environmental threshold determinations, it is the Appellant who bears the burden of proof. *RZC 21.70.190.E and RZC 21.76.060.I(4)*. This means it is the Appellant's obligation to show through evidence and argument that the City's environmental threshold determination was issued in error. In the requested applications, it is the Applicant who must demonstrate through evidence that the proposal comports with criteria for permit approval and applicable development standards. *RZC 21.76.060.J(3)*.

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.
- SEPA appeal commences
- Appellant 's case, including witness testimony and introduction of exhibits. Each Appellant witness will be subject to cross examination by the City and the Applicant.

- The City will then present witnesses and exhibits, with cross examination by the Appellant and the Applicant.
- The Applicant will then present witnesses and exhibits, with cross examination by the Appellant and the City.
- Rebuttal evidence would be allowed in the same order.
- Closing may be made verbally at hearing in reverse order (Applicant, City, Appellant), and/or closing argument may be offered wholly in writing. (This will be decided during the course of the proceeding.)
- End of SEPA appeal.
- Permit application hearing:
 - City's presentation
 - Applicant's presentation
 - Public Comment
 - Responses to public comment first by City and last by Applicant
 - Conclusion of the hearing - housekeeping, confirmation of post-hearing schedule if any
- Note: There is no public comment period during the open record appeal hearing. Only individuals called as witnesses by the parties will be allowed to testify, and all will be subject to cross examination.
- In the permit portion of the proceedings, the Appellant and any Appellant witnesses may provide public comment as members of the public, but they will not have the rights of a party (e.g., no cross examination).
- A single decision document addressing both the appeal and the permit applications will issue following the completed proceedings. The due date for the decision document is ten business days from the close of the record. If there are post-hearing submittals that are scheduled on the record during the proceedings, the record will close when those items are timely submitted. The expected decision issuance date will be announced on the record.

Scheduling Discussion

As of the date of scheduling the instant pre-hearing conference, the next available/possible regularly scheduled appeal hearing date for Redmond was March 29, 2021. The Applicant requested that the hearing date be moved up earlier if possible, contending that since the date of application filing, they had informed the City that they needed a decision by early March in order to program the next academic year in a timely fashion. The Appellant objected to moving the hearing date up, which would provide him (a pro se litigant) less time to prepare. The parties consulted their availability and it was determined that due to the requirement that the staff report on the permits be published 21 days prior to hearing, and the Code-required publication of hearing notice 21 days prior to hearing (which requires submission to the City legal paper of record several business in advance), and due to lack of availability by the City's examiner and City's legal counsel prior to the next regularly scheduled hearing date, and considering fairness

to all parties in light of the Appellant's objection, the parties agreed to schedule the consolidated appeal and permit hearing on March 29, 2021.

ORDER:

Hearing

1. The hearing in this matter is scheduled for **March 29, 2021, to be conducted virtually.**
2. The SEPA appeal hearing, which is open for public observation, will begin at 1 pm. The open record permit application hearing will begin at 5:30 pm, or as soon as possible thereafter following the conclusion of the SEPA appeal hearing and any necessary breaks. There will be a public comment period in the course of the permit hearing, following the anticipated order listed above.
3. The parties are requested to be concise in their arguments such that both the appeal and permit hearings may complete in one day.

Dispositive Motions

4. The Applicant's motion to dismiss shall be submitted by 4:00 pm on February 18, 2021. The City may join in this motion or not; however, no separate City motion was scheduled.
5. The Appellant shall have until 4:00 pm on February 25, 2021 to submit a written response to the motion.
6. The Applicant shall have until 4:00 pm on March 1, 2021 to reply to the Appellant's response.
7. The undersigned shall rule on the dispositive motion by March 5, 2021. All alleged errors on appeal that remain following this ruling shall be addressed in the appeal hearing as prescribed in the pre-hearing document exchange detailed below.

Pre-Hearing Document Exchange Deadlines

8. In order to facilitate preparation and efficient use of hearing time, the parties shall submit Witness and Exhibit Lists (explained below) not later than March 10, 2021.
9. On or before 4:00 pm March 17, 2021, the parties shall electronically submit their exhibits (including expert witness credentials if any). The City exhibits shall include the City's appeal staff report as City's Exhibit 1, even if it has been made available to the parties before this.
10. Pre-hearing legal briefing, if any, shall also be submitted on March 17, 2021 by 4:00 pm. The Appellant should feel free to submit a memorandum in place of a legal brief, which memo would detail the Appellant's arguments and include citations to all authorities upon which the Appellant bases his allegations of error.

Submittals – Please note the following requirements:

11. **Witness lists** shall specify:
 - Name and relationship to appeal (appellant, neighbor, expert, etc.)
 - A concise statement of the content of anticipated testimony (as in, “Addressing traffic and parking,” or the like)
12. **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
13. Exhibit and witness lists shall be prepared as Word documents, no tables or columns, simply numbered 1 through X.¹
14. For the purpose of satisfying all submittal deadlines above, witness lists, exhibit lists, briefing, and the exhibits themselves shall be exchanged as attachments via email. The Examiner will work from electronic copies of the exhibits. The parties may each print their own paper copies, or may agree to mutually exchange paper copies before the hearing date. Note, parties typically also want a complete set of the exhibits for each of their own witnesses. Each party will be responsible for making sure its own witnesses have the complete record.
15. If the City requires paper copies for the official record, the hearing clerk will inform the parties of this requirement, and if yes, the paper copies shall be submitted to the City prior to the hearing date.
16. **Permit hearing exhibits**: For the permit hearing, the City and the Applicant shall include any additional exhibits upon which they intend to rely for the permit application hearing portion of the proceedings that are not already included in the appeal exhibits. The numbering of these permit hearing exhibits - including the City Staff report on the permit applications - shall simply continue where the appeal hearing exhibit numbering leaves off. These may be included in one consolidated exhibit list from each party (City, Applicant), with a footnote or other visual identifier calling out the separation of appeal versus application exhibits. For example, if the City’s appeal exhibits are numbered 1 (Appeal staff report + attachments), 2, 3, etc. through 10, then the City’s permit application staff report would be City Exhibit 11² (with attachments), etc.

¹ In the decision document each party’s exhibits will be assigned a prefix - J for Appellant Jordan, R for City of Redmond, and C for Applicant Cascadia Montessori School; however, submitted exhibit lists should just be numbered without prefix.

² E.g., “City’s permit hearing exhibits being with the City’s permit application staff report at Exhibit 11.”

Communication Before the Hearing

17. All submittals shall be emailed to the Hearing Examiner via the Hearing Clerk, who will forward all submittals to the Examiner and to all other parties.

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

18. 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 the Hearing Clerk at the soonest opportunity by email.
19. 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, both the SEPA appeal and the permit application portions of the proceedings are open record hearings. 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.
20. 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.
21. 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 16, 2021.

By:



Sharon A. Rice
Redmond Hearing Examiner