

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

In the Matter of the Appeal of	)	No. APL LAND-_____
	)	
	)	
<b>CR Home Builders LLC</b>	)	
	)	
Of the September 19, 2018	)	<b>ORDER SETTING HEARING AND</b>
Holmgren Short Plat decision	)	<b>PRE-HEARING SCHEDULE</b>
LAND-2017-00548	)	
(Parcels 1425059181 and 1425059128)	)	

**Waiver of Pre-Hearing Conference**

On October 4, 2018, the City of Redmond Hearing Examiner was notified of an appeal filed by CR Home Builders (Applicant and Appellant) on October 3, 2018 of a denial of a request for approval of a short plat by the City of Redmond Technical Committee. The short plat application (LAND-2017-00548) seeks to subdivide two tax parcels totaling 0.48 acres with an R-4 zoning designation into three lots. The type II request was denied by the City of Redmond Technical Committee on September 19, 2018. The appeal was timely filed on behalf of the Appellant by legal counsel. Notice of appearance was submitted by counsel on behalf of the City.

The basis for short plat denial is concern about the potential existence of a Class IV stream on-site, which the Appellant disputes. On appeal, the Appellant argues that the City's denial is not supported by evidence and is inconsistent with RZC Chapters 21.64, 21.74, and 21.76, and with state law.

Upon review of the appeal, the undersigned did not feel that the appeal required a pre-hearing conference because there are only two parties and the issues are spelled out with sufficient detail to allow the City to respond. The Hearing Clerk offered the parties the opportunity to request a pre-hearing conference, and in the event the parties agreed that no pre-hearing conference was needed, offered the three soonest hearing dates with proposed pre-hearing submittal deadlines.

On October 10th, the Hearing Clerk confirmed with the undersigned that both the Appellant and City waived pre-hearing conference and both parties agreed to a December 10, 2018 hearing date with the associated pre-hearing deadlines.

This order is issued to: confirm the scope of the issues on appeal; inform the parties of expected proceedings; and establish the schedule for pre-hearing document exchange.

### **Clarification of Scope of the Appeal**

This order is intended to establish the scope of the proceedings as limited to the question of whether the September 19, 2018 denial of the short plat and requirement that the Applicant conduct new critical areas study to document a Class IV stream on-site is supported by evidence and is consistent with applicable regulations and policies of the City.

If either party requires further clarification or refinement of this scope, 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**

Neither party identified any intended pre-hearing dispositive motions. No pre-hearing motions schedule is established. Any dispositive motions by the parties may be offered in hearing argument.

### **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.
- Rebuttal evidence would be allowed in the same order.
- Closing statements would follow, first from the City and finally the Appellant, who will have the last word.
- Conclusion of the hearing - housekeeping, confirmation of post-hearing schedule.
- 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 December 10, 2018** in the Redmond City Council Chambers, with breaks as appropriate. It is expected that the hearing will complete that day.
2. The hearing will be limited to argument and evidence addressing whether or not the September 19, 2018 denial of the short plat request and requirement for additional critical

areas study are supported by evidence and consistent with applicable regulations and policies of the City.

*Dispositive Motions*

3. Dispositive motions, if any, may be argued at the outset of the hearing and will be decided in the decision document.

*Pre-Hearing Document Exchange Deadlines*

4. In order to facilitate preparation and efficient use of hearing time, the parties shall submit Witness and Exhibit Lists (explained below) not later than November 26, 2018.
5. On or before December 3, 2018, 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, although it will likely be distributed before this disclosure deadline.
6. Pre-hearing legal briefing, if any, may be submitted by December 3, 2018.

*Submittals* – Please note the following requirements:

7. **Witness lists** shall specify:
  - Name and relationship to appeal (appellant, neighbor, expert, etc.)
  - If offered as expert, a brief statement of credentials (Transportation Engineer, Wetland Biologist, etc)<sup>1</sup>
  - A concise statement of the content of anticipated testimony (Addressing traffic and parking, etc)
8. **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
9. Exhibit and witness lists shall be prepared as Word documents, no tables or columns, simply numbered 1 through X.<sup>2</sup>
10. 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

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<sup>1</sup> Note: These instructions relating to witness and exhibit list exchange are generic and used in all pre-hearing scheduling orders. It is not required or expected that all parties would have expert witnesses or would bring representatives from the professions listed as examples.

<sup>2</sup> In the decision document each party will be assigned a prefix - A for Appellant, C for City.

Examiner (working copies). Note, parties typically also want a copy for their own witnesses.

11. To be considered timely, submittals shall be sent via email not later than 3:00 pm on the due date identified.

*Specific Instructions for Exhibits*

12. The October 3, 2018 appeal shall be Appellant's Exhibit 1.
13. The City's Staff Report shall be City's Exhibit 1.
14. The September 19, 2018 Notice of Decision transmittal letter denying the short plat shall be City's Exhibit 2.
15. Any other documents relevant to the scope of appeal may be offered as separate exhibits by the Appellant or City. The parties are encouraged to coordinate after exhibit list exchange to eliminate any duplicate exhibits.

*Further Communication Before the Hearing*

16. 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:

Duana Koloušková  
koloushkova@jmmlaw.com

City:

James Haney  
jhaney@omwlaw.com

Kathrine Hambley  
khambley@omwlaw.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.

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.
19. 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** October 16, 2018.

By:



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Sharon A. Rice  
Redmond Hearing Examiner