

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

In the Matter of the Appeal of)	Nos. APL LAND-2018-00794
)	DEVREQ2018-00530
)	
John Devore)	ORDER SETTING HEARING AND
)	PRE-HEARING SCHEDULE
Of the June 28, 2018 denial)	
Denial of Reconsideration Request)	
for a second driveway at)	
at 11235 - 165th Court NE, Redmond)	

Waiver of Pre-Hearing Conference

On July 23, 2018, the City of Redmond Hearing Examiner was notified of an appeal filed by John Devore (Appellant) on July 19, 2018 of a denial of a reconsideration request by the City of Redmond Technical Committee. Mr. Devore's request was to allow a second residential driveway at 11235 - 165th Court NE.

The appeal was filed by George Belmore of Per-Spek-Tiv, who stated he is authorized to act as Mr. Devore's agent. In the appeal, Mr. Belmore stated that Lisa Rigg verbally granted him through the close of business on July 19, 2018 to file the appeal.

Because the appeal was filed by the project applicant/agent and because it relates to a narrow issue of whether the code allows a second residential driveway and related arguments, the undersigned determined that a pre-hearing conference was not needed absent a request by the parties. According to the Hearing Clerk, upon inquiry, neither the City nor the Appellant desired a pre-hearing conference.

The City requested the matter be set for hearing on the September 24, 2018 appeal hearing calendar. According to the Hearing Clerk, the Appellant confirmed availability for this date.

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

Clarification of Participants and Representation

The parties are requested to confirm via email to the Hearing Clerk who will participate as each party's primary representative at the hearing for the purpose of ensuring efficient communication.

- Would Mr. Belmore and Mr. Devore please confirm that Mr. Belmore is representing the Appellant at hearing?

- Would the appropriate member of City staff please confirm their status as the City's primary representative at hearing?

Clarification of Scope of the Appeal

In the appeal, the Appellant challenged the denial of the deviation request. The appeal statement identified grounds for standing and alleged procedural error (delays) on the part of the City in issuing the decision on Appellant's deviation request; however, aside from requesting the relief of having the deviation request granted, no other specific errors are alleged.

This order is intended to establish the scope of the proceedings as limited to a the question of whether the June 28, 2018 denial of the deviation request is supported by facts and is consistent with applicable regulations and policies of the City.

Pre-Hearing Motions for the Disposition of Issues

According to the Hearing Clerk, neither party identified whether pre-hearing dispositive motions were anticipated. 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.
- Please note: cross examination will be restricted to questions about the witness's testimony or documents offered by the witness.
- 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 September 24, 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 June 28, 2018 denial of the deviation request is supported by the facts and is 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 September 11, 2018.
5. On or before September 17, 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 September 17, 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) ¹
 - 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

¹ 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.

9. Exhibit and witness lists shall be prepared as Word documents, no tables or columns, simply numbered 1 through X.²
10. For the purpose of satisfying the deadlines above, witness lists, exhibit lists, 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). 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 four page July 19, 2018 appeal form shall be Appellant's Exhibit 1.
13. The City's Staff Report shall be City's Exhibit 1.
14. The June 28, 2018 Lisa Rigg letter denying reconsideration shall be City's Exhibit 2.
15. All other documents attached to the July 19, 2018 appeal - and any other documents relevant to the scope of appeal - may be offered as separate exhibits by the Appellant or City.

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:

John Devore

George Belmore (Representative) gabelmore@mac.com

City:

Benjamin Sticka, bsticka@redmond.gov

² In the decision document each party will be assigned a prefix - D for Appellant Devore, C for City.

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 email the Examiner directly absent exigent circumstances, and all parties should be cc'd on such urgent 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 August 1, 2018.

By:



Sharon A. Rice
Thurston City Hearing Examiner