

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

In the Matter of the Appeal of)	Appeal Nos. LAND-2017-00348 and
)	LAND-2018-00701
Eugene Zakhareyev and)	
Susan Wilkins)	LAND-2013-00171
)	SEPA-2017-00172
of the March 9, 2017 SEPA)	
Determination of Non-Significance)	
(SEPA2017-00172))	
)	
and the Appeal of)	
)	
Eugene Zakhareyev)	ORDER SETTING HEARING AND
)	PRE-HEARING SCHEDULE
Of the June 12, 2018 approval)	
Site Plan Entitlement (LAND2013-00171))	
for the Anjuman-E-Burhani Mosque)	
<u>at 15252 NE 51st Street, Redmond</u>)	

Pre-Hearing Conference

On July 13, 2018, a pre-hearing conference was convened in the above captioned appeal of the March 9, 2017 determination of non-significance (DNS)(SEPA2017-00172) filed by Susan Wilkins and Eugene Zakharaeyev, and the appeal of the June 12, 2018 site plan entitlement (SPE) (LAND2013-00171) submitted by Eugene Zakhareyev solely. Both decisions relate to the proposal by Anjuman-E-Burhani to construct a new mosque at 15252 NE 51st Street in Redmond.

The purpose of the pre-hearing conference was to clarify the issues on appeal, identify participants and party contacts, and to schedule the hearing and pre-hearing document exchange.

Appellant Eugene Zakhareyev attended the telephone conference and was represented by attorney Richard Aramburu. Applicant representatives Eliyas Yakub and Ali Haveliwala were on the call unrepresented. Planners David Lee and Steven Fischer attended on behalf of the City, represented by City Attorney James Haney.

Scheduling Concerns

The Applicants indicated during the conference that they are unwilling to agree to waive the deadline for decision issuance established in RZC 21.76.040.D.2, which requires that the City's final decision in the matter to be issued not later than September 25, 2018.

Additional scheduling issues were as follows: Mr. Aramburu's unavailability in the last two weeks of July; Mr. Zakhareyev's unavailability during the first two weeks of August; and the unavailability of intended Appellant expert witness Mr. Popp the week prior to Labor Day. These factors, together with the City's regular hearing schedule, limit flexibility in scheduling for the matter.

Clarification of Participants and Representation

Appellant Susan Wilkins did not participate in the conference. Mr. Zakhareyev indicated that it was his understanding she did not intend to bring forward her own case or argument in the appeal, and he offered to confer with her and have her let the City know. Mr. Aramburu indicated at the time of the conference he was only representing Mr. Zakhareyev.

After the call, the undersigned asked the City Clerk's Office to also reach out to Ms. Wilkins to confirm her participation. If she intends not to participate, she is asked to please so indicate in writing.

Additionally, Mr. Yakub and Mr. Haveliwala indicated that it is their intention to be represented by counsel, but they had not retained an attorney at the time of the conference. Should they retain counsel, such attorney shall submit a notice of appearance as soon as possible. It is expected that their attorney would agree to the schedule established during the conference, unless the Applicants will agree to extend the 90-day decision issuance deadline established in RZC 21.76.040.D.2.

Clarification Requested by the Applicant

Neither the Applicant nor the City requested clarification of the issues alleged on appeal as stated in the April 7, 2017 MDNS appeal and June 27, 2018 SPE appeal documents.

Pre-Hearing Motions for the Disposition of Issues

The City indicated that it may seek to narrow the scope of issues to be considered in the appeals through a dispositive motion. A motions schedule was set.

Anticipated Order of Proceedings at Hearing

The two appeals, although subject to specific separate regulations and standards, would involve substantially similar if not identical evidence and testimony and therefore they will be heard simultaneously. At the hearing, the following is the anticipated order of business. It is up to the Appellants to expressly identify the evidence offered to address the appropriate burden of proof in each appeal.

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 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.
- 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 may be made verbally at hearing in reverse order (Applicant, City, Appellant), and/or closing argument may be offered wholly in writing.
- 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 **9:00 am on September 10, 2018** in the Redmond City Council Chambers, with breaks as appropriate.
2. If the matter is not sufficiently close to ending by approximately 6:00 pm, the hearing will recess and reconvene at 9:00 am on September 14, 2018. It is the expectation of the undersigned, however, that this contingency date will not be needed if parties proceed efficiently and all are asked to attempt to complete the matter on the first day.

Dispositive Motions

3. Dispositive motions, if any, are due August 10, 2018.
4. Responses are due August 20, 2018.
5. The ruling on any dispositive motion will issue on August 23, 2018 or as soon thereafter as possible.

Pre-Hearing Document Exchange

6. In order to facilitate preparation and efficient use of hearing time, the parties shall submit appeal Witness and Exhibit Lists (explained below) not later than August 27, 2018.
7. Should witnesses and exhibits disclosed cause either party to offer additional witnesses or exhibits, the party shall disclose the additional witnesses and/or exhibits at the earliest opportunity with an Addendum Witness and/or Exhibit List.
8. On or before September 4, 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.

9. At the option of the parties, pre-hearing legal briefing may be submitted by September 4, 2018.
10. At hearing, the parties may request to submit post-hearing briefing according to a schedule to be set on the record, or the Examiner may request briefing at her discretion. If requested, closing briefs will be due September 14, 2018.

Submittals – Please note the following requirements:

11. **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)
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.²
14. The appeal letters shall be included in the Appellants' exhibits. The Notice of SPE approval decision and the DNS appealed from shall be included in the City's exhibits.
15. Please do not include repetitive documents in the exhibits. If two parties disclose the same document as an exhibit, they are requested to confer and determine which one shall offer a given exhibit.
16. Should witnesses and exhibits disclosed by any party cause another party to offer additional witnesses or exhibits, the additional witnesses and/or exhibits shall be disclosed with an Addendum Witness and/or Exhibit List at the earliest opportunity.
17. 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,

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.

² In the decision document each party will be assigned a prefix - Z for Appellant Zakhareyev, C for City, and A for Applicant Anjuman-E-Burhani.

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 witnesses.

18. To be considered timely, submittals shall be sent via email not later than 3:00 pm on the due date identified.
19. If the exhibits offered amount to a large number of pages, the City Clerk's Office may undertake to establish a master record. If the Clerk chooses to do so, she will notify all parties as early as possible. If a master record is created, the parties are asked to be prepared to refer to exhibits both by exhibit number and by master record page number both in testimony and in briefing.
20. All email submittals shall be emailed to the other parties 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

Appellants:

Richard Aramburu
rick@aramburu-eustis.com

Eugene Zakhareyev
eugenez@outlook.com

City:

James Haney, City Attorney
jhaney@omwlaw.com

David Lee, Planner
dlee@redmond.gov

Applicants:

Eliyas Yakub
eliyasy@microsoft.com

Ali Haveliwala
ahaveliwala@gmail.com

21. 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, which means 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.

22. 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.
23. 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 July 16, 2018.

By:



Sharon A. Rice
Thurston City Hearing Examiner