

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

In the Matter of the Appeal of)	NO. LAND-2018-00317
)	
Monica Catunda et al)	
)	
)	Idylwood Beach Park
of the March 2, 2018)	Tree Removal Appeal
Clear and Grade Permit CGD-2018-01368)	
Allowing the removal of 30)	
Cottonwood trees from)	ORDER SETTING HEARING AND
Idylwood Beach Park in Redmond)	PRE-HEARING DOCUMENT
)	EXCHANGE SCHEDULE
_____)	

On March 27, 2018, Marcello Albernaz, Monica Catunda, Rebecca Cooper, and Alan Cooper filed an appeal of clear and grade permit CGP-2018-01362, issued March 2, 2018 to David Tucheck to allow removal of 30 cottonwood trees at Idylwood Beach Park. After filing the appeal, Ms. Catunda retained legal counsel and became the designated contact for all Appellants.

A pre-hearing conference was convened on April 23, 2018 to expedite efficient proceedings in the above captioned appeal. The purpose of a conference is to identify the parties and their representatives, clarify issues on appeal, if needed, to address questions of discovery, and to determine the pre-hearing schedule for the matter. This Order provides information to the parties to facilitate their participation.

Parties Participating in the Conference

The following persons participated in the conference, which was held by telephone.

For Appellants:

Alex Sidles, Attorney for Monica Cataunda
Monica Catunda, Appellant, designated contact for all Appellants

For the City:

Jim Haney, Attorney
Cathy Beam, Principal Planner – Planning Department
Rachel Van Winkle – Deputy Parks Director
David Tucheck – Parks Maintenance and Operations Manager
Michelle Hart, City Clerk

Counsel for both parties confirmed that they are unaware of additional necessary participants. Mr. Sidles acknowledged that notice/service to him on behalf of Ms. Catunda would constitute notice to all Appellants, although he represents only Ms. Catunda.

Clarification of Issues on Appeal

The City requested no clarification of the issues as stated in the appeal document.

The Appellants requested to supplement the appeal submitted March 27, 2018 by adding an additional claim that the City failed to obtain federally required permits to disturb eagle habitat. The City objected to any expansion of the issues as stated in the originally filed appeal.

The Examiner noted that the appeal letter addresses impacts to eagles and salmon under item 2.d, which may be argued without the need to supplement the issues on appeal, and acknowledged that the City's Examiner lacks jurisdiction over federal permits.

Discussion of Other Pre-Hearing Procedural Issues

Dispositive Motions:

The City confirmed that it intends to file a motion to dismiss based on timeliness, which may or may not include standing or other grounds for dismissal.

Discovery:

Counsel for Appellants indicated that they are awaiting responses to public information requests, which City communications have indicated may not be available before mid-June at the earliest. The Appellants desired to obtain the discovery to inform their response to the City's motion, their exhibit list, and their arguments on appeal.

The City confirmed that the tree removal project was prompted by concerns related to public safety after an injury at the park last year. The City Attorney stated that he would do what he can to assist in expediting public records disclosures, but argued that the questions of timeliness and standing are questions of law for which any factual evidence gleaned through public records disclosure could have limited relevance.

The City Clerk noted that the requests are broad and that a narrowing of documents sought and/or the date ranges would be the most likely means of speeding up disclosure of public records.

To the extent that the scheduling for the instant process is informed by the City's concern over public safety, the Appellants noted that they dispute that the trees in question constitute public hazard based on an arborist's evaluation that they intend to offer in evidence.

The next two regularly scheduled appeal hearing dates are May 29th and June 25th. Given that public records would not be fully disclosed before June and that it would not be feasible to conclude the pre-hearing motions process early enough to allow a hearing by May 29th, the date of June 25, 2018 will be reserved for this appeal.

In balancing between these two important concerns - full disclosure of public records and public safety - a schedule was established with the agreement of the parties that sets the City's dispositive motion deadline in mid-May. It is understood that in response to the City's motion, the Appellants may argue that they need completed public records disclosure to effectively respond. Should such an argument prevail, the schedule agreed to herein would be adjusted.

Briefing:

During the conference call, the topic of whether the parties intend to submit briefing was inadvertently omitted from the scheduling discussion. This order will set a due date for briefing, if either party desires to brief their arguments in advance.

Anticipated Order of Proceedings at Hearing

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.
- Appellants' 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 Appellants.
- The Appellants would have an opportunity to present rebuttal evidence, if any.
- Closing arguments would be heard first from the City and then from the Appellants; or the parties may elect, or the Examiner at her sole discretion may request, closing arguments in writing after adjournment.
- Conclusion of the hearing - housekeeping, post-hearing scheduling (if any), and identification of decision due date.
- 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 testimony will be subject to cross examination.

Order

1. The parties are encouraged to work jointly to expedite disclosure of necessary records. On the part of Appellants, counsel for Appellants should take any possible, appropriate steps to narrow the requests to more selectively target needed information, e.g., narrowing the date ranges and any other focused targeting of the public records requests that could speed up disclosure. On the part of the City, the City Attorney shall work with City personnel to identify any documents in City department possession that can be provided outside the public records process for the purpose of speeding up disclosure.
2. The parties are encouraged to entertain settlement discussions and arrive at a mutually agreeable resolution in advance of hearing and decision on the merits.

Hearing Scheduling

3. **The appeal hearing is scheduled in the Redmond City Council Chambers on June 25 2018 at 1:00 pm.** The hearing will proceed until the appeal is completed with breaks as appropriate.
4. The parties are requested to hold the entire day open (starting at 10:00 am) in the event that the morning time slot becomes available. Notice of a revised hearing time of 10:00 am would be circulated by email as soon as it is known whether the morning is available.

Motions

5. The City's motion to dismiss, and any other dispositive motions, shall be submitted May 14, 2018.
6. Responses to dispositive motions shall be submitted May 21, 2018.
7. Replies, if any, shall be submitted May 25, 2018.
8. A ruling on dispositive motion(s) will issue June 1, 2018.

Document Exchange

9. The parties shall submit Witness and Exhibit Lists (explained below) not later than June 11, 2018.
10. By June 18, 2018, the parties shall exchange exhibits, including expert witness credentials if any. The City's Staff report on the appeal shall be included in the City's exhibits.
11. Pre-hearing briefing, if any, shall also be submitted on June 11, 2018.
12. Should witnesses and exhibits disclosed by one party cause the other party to offer additional witnesses or exhibits, these shall be disclosed with an Addendum Witness and/or Exhibit List at the earliest opportunity. Addendum exhibit lists shall be numbered to start where the party's original list left off.

*Submittals - **Please note the following requirements:***

13. **Witness lists** shall specify:
 - Name and relationship to appeal (appellant, neighbor, expert, etc.)
 - If offered as expert, a brief summary of credentials (Transportation Engineer, Wetland Biologist, etc)¹
 - A concise summary of the content of anticipated testimony (Addressing traffic and parking, etc)
14. **Exhibit lists** shall specify:

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.

- 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
15. The appeal form and the decision appealed from shall both be included by one of the parties as exhibits.
 16. Exhibit and witness lists shall be prepared as **Word documents, no tables or columns, simply numbered 1 through X.** [In the decision document each party will be assigned a prefix - A for Appellant and C for City - but that does not affect your numbered exhibit lists.]
 17. In order to save paper and copying time/costs, if exhibit list exchange reveals the parties intend to submit duplicates of the same documents, the parties shall coordinate to avoid duplicate exhibits in the record.
 18. Should witnesses and exhibits disclosed by any party cause the other party to offer additional witnesses or exhibits, these shall be disclosed with an Addendum Witness and/or Exhibit List at the earliest opportunity.
 19. If a party's exhibit list is amended, either to avoid duplication or to add additional exhibits, that party shall provide an final complete exhibit list on the day of the hearing. A Word version of the documents shall be emailed to the Office of the Hearing Examiner by the date of the hearing at the email address below.
 20. For the purpose of satisfying the deadlines above, the witness list, exhibit list, briefing, and the exhibits themselves may be exchanged via email.
 21. To be considered timely, **submittals shall be sent via email not later than 4:00 pm on the due date identified.** All email submittals shall be directed to the attention of the Office of the Hearing Examiner at the email address below. The Clerk's office will circulate email communications to all parties and the Examiner.

Office of the Hearing Examiner
 Attention Cheryl Xanthos, Deputy City Clerk
cdxanthos@redmond.gov

Additional Information

22. 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, this matter 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.

23. 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 witnesses.
24. 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 any such urgent communications.
25. 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 April 24, 2018.

By:



Sharon A. Rice
Redmond Hearing Examiner