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

8  
9 In the Matter of the Appeal of

10  
11 **Dr. John Brunzman**

12  
13 of the August 22, 2017  
14 Relocation Claim Determination  
15 Related to property at  
16 16146 NE Cleveland Street, Redmond  
17

NO.

APPELLANTS' REPLY IN SUPPORT OF  
MOTION TO CHANGE FORUM FOR  
APPEAL

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19 The City's Ordinance shifting jurisdiction to the Hearing Examiner does not govern mere  
20 "procedural" issues. It goes to the question of whether, at the time of the appeal on October 17,  
21 Dr. Brunzman had a vested right to an appeal by a state court administrative law judge. He did.  
22 The City's attempt to impose a new law after his appeal was filed violates both the Ordinance's  
23 own terms—it *does not say* it is retroactive, and in fact states it does not take affect for five days  
24 after "publication"—and the case law. The motion should be granted for a number of reasons.  
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27 First, to be clear, this motion is not premised on this particular Hearing Examiner's  
28 fairness or competence. Appellants are *not* claiming that a "manifest injustice" would result if  
29 the Hearing Examiner decides this case. Instead, this is a jurisdictional issue. After the Hearing  
30 Examiner identified the Ordinance in question at the prehearing conference, and after  
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1 undersigned counsel reviewed the Ordinance and its terms, Appellants and counsel came to the  
2 conclusion that proper jurisdiction lies elsewhere. Jurisdiction is a fundamental concept, and  
3 must be raised when it appears a tribunal lacks it.  
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5 Second, to clarify the record, since the time of the motion the City has published on its  
6 website a final copy of the Ordinance. It is attached. As the Hearing Examiner can see, it's  
7 effective date is October 28—eleven days after the appeal was filed.  
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9 Third, the City's reliance on criminal case law in *State v. Pillatos*, 159 Wn.2d 459, 150  
10 P.3d 1130 (2007), is unavailing, and ignores the fundamental concepts at play. The default rule<sup>1</sup>  
11 is that laws are prospective only unless there is contrary legislative intent. *In re Haviland*, 177  
12 Wn.2d 68, 75, 301 P.3d 31 (2013). With respect to retroactivity, an interpreting tribunal looks at  
13 the plain language of a statute to determine legislative intent and, if the intent is plain, applies the  
14 language without further inquiry. *Id.* at 75-76 (citing *Dep't of Ecology v. Campbell & Gwinn,*  
15 *LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)).  
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19 If a legislature *fails* to specify an effective date for a law, it lends weight to the  
20 conclusion that it applies retroactively. *Id.* at 77. Here, the City did specify an effective date,  
21 which was eleven days after the appeal was filed. Had the City wanted the statute to apply  
22 retroactively, it could have said so—or, like in *Haviland*, not commented on an effective date. It  
23 did neither. The plain language of the Ordinance is that it applies to only new appeals. Indeed,  
24 the plain language of sections (A), (B), and (C) of the statute address the process of appealing—  
25 *an event that had already occurred* in this case at the time the Ordinance went into effect. The  
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32 <sup>1</sup> Both the City and Appellants agree that principles governing statutory interpretation govern the Hearing Examiner's interpretation of this municipal code.

1 “triggering event” for the purposes of this Ordinance is the filing of an appeal. Since, in this  
2 case, that appeal was already filed, the Ordinance does not apply.

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4 *Pillatos* does not change this result. In that opinion, the court considered a law passed in  
5 2005 that granted to juries, not judges, the power to determine exceptional sentences in  
6 aggravated first-degree murder cases. Critically, the law in question was clear that is applied to  
7 all pending cases where no trial had begun or plea had been taken. 159 Wn.2d at 470. Two  
8 defendants had already pled guilty and accordingly “the statute, by its terms, does not apply to  
9 them.” *Id.* The question in *Pillatos* was whether defendants who had not pled guilty or begun  
10 their trials could be governed by the statutes for crimes committed before the statute was passed.  
11 *Id.* That question is not akin to Appellants’ issues. The Ordinance passed by the City, by its  
12 own terms, governs the process of filing an appeal and takes effect after publication in the local  
13 newspapers. Like the two defendants in *Pillatos*, the Ordinance, by its own terms, simply does  
14 not apply to Appellants.  
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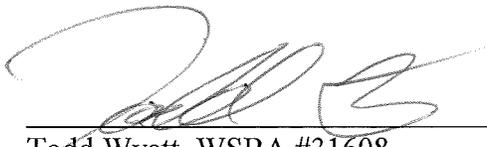
19 Fourth, as to the Hearing Examiner’s authority to order the City to assign this matter to  
20 an administrative law judge, the City’s reasoning is well-taken. If the Hearing Examiner lacks  
21 jurisdiction over this matter, it also lacks jurisdiction to order the City to transfer the matter.  
22 Appellants accordingly agree that such an order would be void and withdraw that request.

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24 That is not to say, however, that the analysis regarding the proper tribunal in Appellants’  
25 motion is incorrect. Because the City has never enacted any official to preside over this appeal,  
26 the default rule under the statutes is to assign this to a state administrative law judge. That the  
27 City tried to correct its error with the Ordinance is of no consequence. But because the Hearing  
28 Examiner lacks authority to order the City to comply with these regulations, this issue will likely  
29 be raised at a later time.  
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DATED this 6th day of December, 2017.

CARSON & NOEL, PLLC



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Todd Wyatt, WSBA #31608  
Attorney for Appellants

CODE

**CITY OF REDMOND  
ORDINANCE NO. 2894**

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, ADOPTING RMC 1.18, RELOCATION ASSISTANCE APPEALS; DELEGATING AUTHORITY TO HEAR APPEALS AUTHORIZED BY WAC 468-100-010 FROM DECISIONS MADE UNDER THE UNIFORM REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE ACT TO THE REDMOND HEARING EXAMINER; AND ESTABLISHING PROCEDURES FOR SUCH APPEALS

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WHEREAS, the Uniform Real Property Acquisition and Relocation Assistance Act, Chapter 8.26 RCW, requires that all local governments pay relocation benefits to residents and businesses that are displaced by the acquisition of land for public projects; and

WHEREAS, WAC 468-100-010 requires displacing agencies to review appeals of decisions made under Chapter 8.26 RCW regarding relocation benefits and other expenses; and

WHEREAS, the Redmond City Council has determined that the most appropriate tribunal to consider such appeals is the Redmond Hearing Examiner.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1.      Classification.      This ordinance is of a general and permanent nature and shall become a part of the City Code.

Section 2.      Appeals.    RMC 1.18 is hereby adopted to read as follows:

**CHAPTER 1.18    RELOCATION ASSISTANCE APPEALS**

**Sections:**

**1.18.010    Relocation assistance appeals.**

**1.18.010    Relocation assistance appeals.**

(A) Any person who believes that the City has failed to properly determine the person's eligibility for, or the amount of, a payment required under WAC 468-100-105 or RCW 8.26.200, or a relocation payment under Chapter 8.26 RCW or Chapter 468-100 WAC may file an appeal of the determination to the Hearing Examiner.

(B) An appeal under this Section shall be filed with the Office of the Hearing Examiner within sixty calendar days after the person receives written notification of the City's final determination on the person's claim. Failure to file an appeal in a timely manner shall be a bar to consideration of the appeal by the Hearing Examiner.

(C) All appeals under this section shall be in writing, but no specific form of appeal is required and the appeal shall be considered regardless of form. The

appeal notice or letter should state what issues are being claimed, the reasons why the aggrieved person believes the claim should be allowed, and how the person believes he or she is otherwise aggrieved. The letter or notice should clearly identify the City project and parcel of real property involved and should bear the signature and address of the aggrieved person or the person's authorized representative. The Hearing Examiner may refuse to schedule any hearing on an appeal until these requirements have been complied with or may issue an order providing for dismissal of such appeal upon failure of the appellant to meet these requirements within fourteen calendar days of a request by the City for the required information.

(D) The City shall permit a person to inspect and copy all materials pertinent to the person's appeal, except materials which are classified as confidential by the City and that are exempt from disclosure under the Public Records Act, Chapter 42.56 RCW. The City may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(E) Discovery will be available in relocation appeals as follows: Any party to a relocation appeal may

obtain discovery from any party by written interrogatories, written admissions, oral depositions, subpoena duces tecums, and written requests for production of documents. The procedures regarding these methods of discovery are found at King County Superior Court Civil Rule 28 through 36 and 45(b) as now or hereafter amended and are hereby incorporated in this section.

(F) Hearings shall be conducted using the procedures set forth in Chapter 468-10 WAC. Where the rules of this section conflict with those of chapter 468-10 or 10-08 WAC, the rules of this section shall control. The Hearing Examiner may adopt additional rules of procedure to govern matters not covered by chapter 468-10 or this section.

Section 3.      Severability.      If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 4.      Effective Date.      This ordinance shall become effective five days after its publication, or publication of a summary thereof, in the city's official newspaper, or as otherwise provided by law.

ADOPTED by the Redmond City Council this 17<sup>th</sup> day of October, 2017.

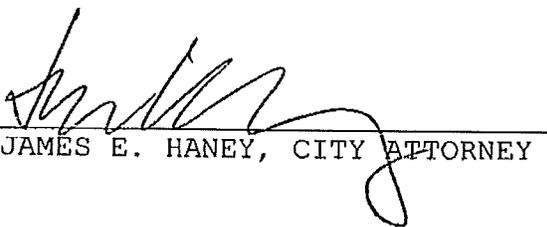
APPROVED:

  
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JOHN MARCHIONE, MAYOR

ATTEST:

  
\_\_\_\_\_  
MICHELLE M. HART, MMC, CITY CLERK

APPROVED AS TO FORM:

  
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JAMES E. HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:      October 3, 2017  
PASSED BY THE CITY COUNCIL:      October 17, 2017  
SIGNED BY THE MAYOR:              October 20, 2017  
PUBLISHED:                              October 23, 2017  
EFFECTIVE DATE:                        October 28, 2017  
ORDINANCE NO. 2894

YES: BIRNEY, CARSON, MARGESON, MYERS, PADHYE, SHUTZ, STILIN