

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

In the Matter of the Appeal of)	NO. APP LAND 2017-00888
)	
)	
Deal Investments LLC)	Blackbird Appeal
)	
)	
of the Notice of Decision in the)	
Blackbird Site Plan Entitlement)	ORDER SETTING HEARING AND
for a proposal on property at)	PRE-HEARING DOCUMENT
7635 - 7661 159th Place, Redmond)	EXCHANGE SCHEDULE
<u>Issued August 24, 2017</u>)	

A pre-hearing conference was convened on September 20, 2017 to expedite efficient proceedings in the above captioned appeal, which was timely filed on September 7, 2017. The purpose of the pre-hearing conference was to clarify the issues on appeal and to determine the 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 Appellant/Applicant Deal Investments LLC:

Rich Hill, Attorney
Michelle Hayden, Deal Investments

For the City:

James Haney, Attorney
Daniel Kenney, Attorney
Karen Haluza, Planning Manager
Steven Fischer, Development Services Planning Manager
Gary Lee, Senior Planner

Counsel for both parties confirmed that they are unaware of additional necessary participants.

Clarification of Issues on Appeal

The City requested no clarification of the issues as stated in the appeal document, with one exception. The City sought to confirm whether the Appellant's challenge with the regard to the in lieu fee deviation was a challenge to the validity of the ordinance. Appellant's counsel confirmed that arguments made in the instant forum would be limited to the application of, not the validity of the ordinance.

Discussion of Other Pre-Hearing Procedural Issues

Counsel for the Appellant indicated there would possibly be a pre-hearing dispositive motion.

Appellant's Counsel submitted a proposed schedule that included the following suggested timeline:

- October 16 – City response to public records request due
- October 23 – Depositions of Gary Lee (9 am) and Karen Haluza (1 pm)
- October 30 – Deadline for mediation (I know the Hearing Examiner Rules do not impose an obligation on the parties to engage in formal mediation, but the facts of this case seem to be conducive to a mediated resolution, which is why I propose to schedule one)
- ...
- November 13 - hearing

City Attorney James Haney indicated that he would be willing to meet with the City's records request personnel to attempt to expedite release of the requested public records, and to meet with Mr. Hill (by phone) separate from the conference call to address possible increased specificity or other amendments to the request in order to expedite release of requested records.

The question of whether Redmond's examiner has authority to require formal discovery, e.g., depositions, was briefly discussed. Mr. Hill indicated that he would be satisfied with a less formal conversation between the named staff members, the City Attorney, and himself in order to facilitate information exchange in preparation for the appeal hearing, and/or for use in settlement discussions.

Similarly, counsel for both parties acknowledged that the City's adopted regulations and rules do not create a system of mandatory mediation prior to appeal hearing. Both counselors acknowledged that parties to appeals are often better served in reaching a negotiated settlement rather than being required to oppose/defend an outcome crafted by the examiner.

Should settlement discussions not prove fruitful, a schedule for motions, witness and exhibit list, and exhibit exchange was agreed upon. The examiner made all parties aware of the deadline for 90-day appeal decision issuance triggered by RZC 21.76.040.D.2.a, which in the instant case would be December 6, 2017. The November 13th hearing date and December 6th deadline would leave approximately one week for post hearing legal briefing, as appropriate. Should more time for settlement discussion be mutually desired, the parties were reminded of their right to mutually waive the 90-day decision issuance deadline established in RZC 21.76.040.D.2.c. Motions to extend the agreed schedule would be welcome subject to waiver of the 90-day deadline by both parties.

The conference call did not include establishing a pre-hearing legal briefing deadline. Should either party desire to submit pre-hearing briefing, it would be due at the same as exhibits, or November 6th.

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.
- 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, if any, would be presented in reverse order.
- Closing arguments would be heard first from the City and last from the Appellant; or the parties may request to make closing arguments in writing after adjournment.
- 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.
- Conclusion of the hearing - housekeeping, post-hearing scheduling (if any), and identification of decision due date.

Order

Hearing Scheduling

1. **The appeal hearing is scheduled in the Redmond City Council Chambers on November 13, 2017 at 10:00 am.** The hearing will proceed until the appeal is completed with breaks as appropriate.

Motions

2. Any dispositive motions shall be submitted by October 16, 2017.
3. Parties shall have until October 23, 2017 to submit a response to dispositive motions filed. No replies to the responses are invited.
4. The undersigned will rule on all dispositive motions by October 26, 2017.

Document Exchange

5. The parties shall submit Witness and Exhibit Lists (explained below) not later than October 30, 2017.
6. On or before November 6, 2017, 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. Pre-hearing briefing, if any, shall also be submitted on November 6th.
7. Deadlines for post-hearing briefing, if any, shall be established on the record at hearing.

Submittals must comply with the following requirements:

8. Exhibit and witness lists shall be prepared as **auto-numbered Word documents, no tables or columns, numbered 1 through X.** A Word version of the lists shall be provided to the Office of the Hearing Examiner by the date of the hearing at the email address below. In the decision document each party will be assigned a prefix (e.g., Appellant's 1-X and City 1-X).
9. Witness lists shall specify:
 - Name and relationship to appeal (appellant, neighbor, expert, etc.)¹
 - If offered as expert, a concise statement on the nature of the individual's credentials (Transportation Engineer, Wetland Biologist, etc)
 - A one sentence summary of the content of anticipated testimony (Addressing traffic and parking, etc)
10. 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, when, and from where taken
 - If other materials, identify the source
 - Brief summary of content (not more than one sentence)
- 11. For the purpose of satisfying the deadlines above, the witness list, exhibit list, briefing, and the exhibits themselves may be exchanged via email.**
12. 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. Addendum exhibit lists shall be numbered to start where the original list left off.
13. 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.
14. 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), or three total sets of hard copies. Note, parties typically also want a copy for their witnesses.

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, transportation engineers, or would bring representatives from the other professions listed as examples.

15. 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

16. If the volume of evidence offered is high, the City Clerk's Office may be asked to undertake creation of a master record containing all exhibits submitted prior to hearing. The master record would include bates stamped page numbers for ease of reference during testimony. This record would be created in approximately the week prior to hearing and parties would be expected to refer to the master record page number during testimony.
17. 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.
18. 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 September 20, 2017.

By:



Sharon A. Rice
Redmond Hearing Examiner