

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

In the Matter of the Appeal of	)	NO. APP_____
	)	
	)	
<b>Carol Rich and William Wurtz</b>	)	<b>Wurtz Appeal</b>
	)	
	)	
of approved Tree Removal Permit	)	
TREE-2017-05720/IVR #-151793	)	ORDER SETTING HEARING AND
Authorizing removal of cedar tree at	)	PRE-HEARING DOCUMENT
17521 38th Court, Redmond	)	EXCHANGE SCHEDULE
<u>Issued August 4, 2017</u>	)	

A pre-hearing conference was convened on September 5, 2017 to expedite efficient proceedings in the above captioned appeal, which was timely filed on August 18, 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 and promote efficiency of the proceedings.

**Parties**

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

*For Appellant:*  
William Wurtz

*For the Applicant:*  
Samuel Rodabaugh, Attorney  
Cheri Rudolph, Applicant

*For the City:*  
Ben Sticka, Planning  
Carl McArthy, Code Enforcement  
Steven Fischer, Development Services Planning Manager

Prior to the pre-hearing conference, representatives of the Fairweather Homeowners Association, which entity had submitted comments to the City in support of Ms. Rudolph's tree removal application, were inadvertently not contacted. After that conference, the Hearing Examiner's Office made contact with Gabriella Wagner, who indicated she would be participating in the proceedings on behalf of the HOA. It is not presently known to what extent they intend to participate as a party

### **Information exchanged in the conference**

The appeal assigned the following (paraphrased) errors in the tree removal permit approval:

- Tree removal permit is invalid because it relies on a flawed tree health assessment; and
- The only defect identified in the tree health assessment is insufficient to warrant removal.

Appellants requested that the permit be ruled invalid and the tree be retained.<sup>1</sup>

Counsel for the Applicant requested clarification from Mr. Wurtz of the issues on appeal, asking if health of the tree was the only basis for the appeal and also asking for more specificity. A schedule for written clarification of the issues on appeal was determined.

Counsel for the Applicant indicated an intent to file a pre-hearing dispositive motion.

Mr. Wurtz indicated that as a result of the pre-hearing conference, he felt he needed to retain an attorney. He noted that he could not speak for a potential future attorney's availability, nor at the time of the conference, guarantee the arborist(s) he intends to retain as witness(es) would be available on the schedule discussed. Mr. Rodabaugh also noted that he was unable to confirm the Applicant's arborist's availability to comply with the schedule discussed. Counsel the Fairweather HOA was not consulted prior to establishing the schedule.

The parties were instructed to make every attempt to conform to the schedule established in the pre-hearing conference; however, they were informed that motions to adjust the schedule would be accepted and ruled upon. Be advised that RZC 21.76.040.D.2.a requires a decision to be issued within 90 days of a timely requested appeal. In this case, the decision issuance deadline is November 16th, 2017. The hearing Examiner requires a minimum of ten business days from the close of the record, which means the record would need to close by November 2, 2017.

Be advised that given the circumstances of the matter, the Appellant, the Applicant, and the City would need to waive the 90 day deadline consistent with RZC 21.76.040.D.2.c in order to extend the calendar. The next regularly scheduled appeal hearing date is November 27, 2017. Note that the undersigned is not available for the November 27th appeal date; any appeal heard on that date would be heard by the City's pro tem examiner. The undersigned has fairly limited availability for alternate dates in November.

### **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 Applicant and the City.

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<sup>1</sup> During the pre-hearing conference, Mr. Wurtz confirmed the accuracy of errors assigned and relief requested as paraphrased.

- The Applicant will then present witnesses and exhibits, with cross examination by the Appellant and the City.
- The City will then present witnesses and exhibits, with cross examination by the Appellant and the Applicant.
- Rebuttal evidence, if any, would be presented in reverse order.
- Closing arguments would be heard first from the City, then Applicant, and finally 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 will be subject to cross examination.
- Conclusion of the hearing - housekeeping, post-hearing scheduling (if any), and identification of decision due date.

The following Order sets the hearing date and pre-hearing schedule with which all parties must comply.

## **Order**

### *Hearing Scheduling*

1. **The appeal hearing is scheduled in the Redmond City Council Chambers on October 25, 2017 at 10:00 am.** The hearing will proceed until the appeal is completed with breaks as appropriate.

### *Clarification*

2. Not later than September 22, 2017, the Appellant shall submit a clarification of the grounds for appeal, providing additional specificity with respect to the two errors alleged in the appeal statement as paraphrased above.

### *Motions*

3. Any dispositive motions shall be submitted by September 26, 2017.
4. Parties shall have until September 29, 2017 to submit a response to dispositive motions filed. No replies to the responses are invited.
5. The undersigned will rule on all dispositive motions by October 4, 2017.

### *Document Exchange*

6. The parties shall submit Witness and Exhibit Lists (explained below) not later than October 11, 2017.
7. On or before October 18, 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.
8. Deadlines for post-hearing briefing, if any, shall be established on the record at hearing.

**Submittals must comply with the following requirements:**

9. 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 documents shall be emailed 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, Applicant's 1-X, and City 1-X).
  
10. **Witness lists** shall specify:
  - Name and relationship to appeal (appellant, neighbor, expert, etc.)<sup>2</sup>
  - If offered as expert, a brief summary of credentials (Transportation Engineer, Wetland Biologist, etc)
  - A one sentence summary of the content of anticipated testimony (Addressing traffic and parking, etc)
  
11. **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
  - Brief summary of content (not more than one sentence)
  
12. For the purpose of satisfying the deadlines above, the witness list, exhibit list, briefing, and the exhibits themselves may be exchanged via email.
  
13. 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.
  
14. 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.
  
15. 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 four total sets of hard copies. Note, parties typically also want a copy for their witnesses.

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<sup>2</sup> 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.

16. 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](mailto:cdxanthos@redmond.gov)

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 6, 2017.

By:



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Sharon A. Rice  
Redmond Hearing Examiner