

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

In the Matter of the Appeal of)	
)	
Dr. John Brunzman)	Brunzman Relocation Assistance
)	Claim Determination Appeal
)	
of Redmond's August 22, 2017)	
Relocation Assistance Claim Determination)	
related to property at)	CITY OF REDMOND'S
16146 NE Cleveland Street, Redmond)	DECISION AND ORDER ON APPEAL
_____)	

SUMMARY OF ORDER

The appeal of the August 22, 2017 relocation assistance claim determination by the City of Redmond for Dr. John Brunzman's relocation from 16146 NE Cleveland Street is **DENIED**.

PROCEDURAL HISTORY

On August 22, 2017, the City of Redmond (City) issued a relocation assistance claim determination to Dr. John Brunzman (Appellant) pursuant to the Uniform Real Property Acquisition and Relocation Assistance Act (RCW 8.26). Appellant timely appealed the determination within 60 days, as specified in Washington Administrative Code (WAC) 468-100-010, on October 16, 2017.

The City subsequently passed Ordinance No. 2894, which was passed by the City Council on October 17, 2017 and became effective on October 28, 2017. Ordinance No. 2894 delegated jurisdiction to hear relocation assistance appeals to the City's Hearing Examiner.

The Hearing Examiner conducted a pre-hearing conference on November 3, 2017 and issued an order establishing the hearing date and schedule for pre-hearing exchange of documents.

On November 20, 2017, counsel for Appellant submitted a motion to dismiss for lack of jurisdiction, on the grounds that the appeal had been filed prior to adoption (and the effective date) of the ordinance granting jurisdiction. After considering argument from the Appellant and the City, the Hearing Examiner determined that the determination appeal did not vest as to procedures and that the City's Hearing Examiner has jurisdiction to hear the appeal.

The appeal hearing was conducted on January 12, 2018. The Hearing Examiner requested post-hearing briefs, to be submitted by January 24, 2018.

SUMMARY OF RECORD

Exhibits

Due to volume, the exhibits admitted in the record are set forth in Appendix A. They were compiled and paginated by the City Clerk's office into a "Master Record". In most places, citations to exhibits in the findings that follow are both to the exhibit numbers originally assigned by the parties, as well as to the Master Record (MR) page number(s). Appellant exhibits are identified by an "A" prefix, while City exhibits are identified by a "C" prefix.

In addition to the documents listed in Appendix A, pre- and post-hearing motions and briefs submitted by the parties are also included in the record, together with the Hearing Examiner's pre-hearing orders, found at Appendix B.

Witnesses

The following individuals testified under oath:

Dr. John Brunsman, Appellant
Debby Wilson, Real Property Manager, City of Redmond

Legal Counsel

For Appellant: Todd Wyatt of Carson & Noel, PLLC

For City of Redmond: Aaron P. Riensche of Ogden Murphy Wallace, PLLC

Based upon the evidence admitted into the record, the Hearing Examiner enters the following findings:

FINDINGS

1. Appellant John Brunsman, DPM is a podiatrist who operated his business Redmond Foot Care Associates at 16146 Cleveland Street from approximately 1990 or 1991 until he was evicted from the leased space in 2013. The Appellant was a tenant in the Cleveland Street building; after his initial lease term expired, he continued on a month-to-month basis from the mid-1990s on. He received US Department of Health and Human Services approval to operate an ambulatory surgery center (ASC) at the Cleveland Street building under the Medicare program in 1994 and was operating an ASC at the time of eviction. *Dr. John Brunsman Testimony; Exhibit A 1 (MR 149).*
2. The Appellant's Cleveland Street ASC/clinic consisted of approximately 600 square feet total, including two approximately 70 square foot operating rooms, an approximately 80 square foot recovery room, an approximately 100 square foot waiting room, an approximately 72 square foot office, one bathroom, two storage areas, a utility room, and a reception area. *Exhibit A 30 (MR 253); Dr. John Brunsman Testimony.*
3. During some of the time that the Appellant practiced from the Cleveland Street location, he split his time between Cleveland Street and another ASC he operated in Monroe, Washington, spending two to three days at each location. While the duration of this arrangement was not clearly established, the record contains a Washington State Department of Health facility license for the Monroe ASC issued on July 2, 2012, which

expired on July 1, 2015. The Appellant closed the Monroe facility and allowed the facility license to expire due to increased rent as a result of a change in building ownership. Prior to vacating the Monroe facility, he had been on a month-to-month lease. *Dr. John Brunsman Testimony; Exhibit A 10 (MR 183).*

4. The Appellant's relocation claim stems from the City's acquisition of 16146 Cleveland Street for purposes of a parks project. The City sent the Appellant notice of the City's acquisition of the property - and the Appellant's eventual need to move - on April 11, 2012. The notice letter explained that the City would allow occupancy of the building through September of 2012 pursuant to a short-term lease, and a copy of the offered lease was enclosed. The letter also explained that the Appellant might be eligible for relocation benefits. The Appellant neither signed the lease nor vacated the property. In response to subsequent eviction notices from the City on October 10, 2012 and May 24, 2013, the Appellant and his consultants met with the City's Real Property Manger, Debby Wilson, on May 29, 2013 to discuss relocation. The Appellant's consultants included Martyn Daniel (relocation consultant), Michael Wager (an architect with expertise in medical facilities) of The Wager Group, and Jonathan Fast of Aldrich + Associates (construction contractor). The Appellant presented the City with the documents constituting his initial claim at this meeting, including a list of "Suggested Equipment & Furnishings" totaling \$361,913, a "Rough Order of Magnitude Cost Projection" by Aldrich + Associates, and a "Summary Facility Comparison" chart. *Exhibits C 1-4 (MR 24-60); Exhibit A 5 (MR 168-72).*
5. The Aldrich + Associates cost projection was based on a preliminary floor plan prepared by The Wager Group, for build out of a potential replacement property that the Appellant located within Redmond. The Appellant did not search for replacement properties outside of Redmond. *Exhibit A 30 (MR 251-52); Dr. John Brunsman Testimony.*
6. As shown on the preliminary floor plan, the proposed replacement facility would be 6,196 square feet, including 5190 square feet designated for the ASC, and 1,006 square feet for the clinic. The ASC would include two approximately 440 square foot operating rooms, three patient interview rooms, two "pre-OR" rooms/bays, five recovery rooms (including one designated a "cry" room), a nurse manager office, a nurse station, men's and women's locker rooms, a staff lounge, a reception/waiting area, a business office, several restrooms, and assorted utility/storage/equipment rooms. The clinic portion would include a separate reception/waiting area, two exam rooms, a restroom, and offices. *Exhibit A 30 (MR 252).* In a fax to his real estate agent on May 7, 2013 describing the preliminary floor plan, the Appellant wrote, "It is on track to be the nicest free standing independent facility around" *Exhibit A 28 (MR 245).*
7. The Appellant submitted that the proposed ASC was larger than his former clinic because it would be subject to new standards for medical facilities that differ from those in effect when the Cleveland Street ASC was approved in 1994; his practice continued to be "grandfathered" to the earlier standards so long as it was at that location. However, based on review of the documents submitted (described in detail below) and the Appellant's testimony regarding the future use of the space, it is clear that the proposed new facility

contemplates a larger-scale practice. The Appellant testified that the proposed space would allow for additional doctors and support personnel to practice there. *Dr. John Brunsman Testimony*.

8. In support of the scale of improvements proposed, the Appellant submitted a chart (author not stated) purporting to show a comparison between the 1994 and 2006 design and construction standards for healthcare facilities, which suggests (if accurate¹) that certain elements of the proposed design are required to comply with the 2006 standards. One example is separate waiting and reception areas for the ASC and the clinic. However, the chart also suggests that other elements proposed by the Appellant far exceed what would be required to comply with the 2006 standards. For example, the chart indicates that each operating room needs to be at least 200 square feet and that one 80 square foot recovery room is needed per operating room. As proposed, there would be two approximately 440 square foot operating rooms and five recovery rooms. The maker of the chart was not called as a witness at the hearing. *Exhibit A 32 (MR 268-71) and Exhibit C 4 (MR 57-60)*.
9. The Aldrich + Associates estimate included "ASC" of 5,190 square feet as a single line item and indicated a cost range of \$1,232,625 to \$1,492,125, and "Tenant Improvements" of 1,006 square feet (correlating with clinic area) as a second line item with a cost range of \$119,483 to \$144,813. No detailed cost breakdown was provided. Separate line items were included for mechanical and electrical items. The estimated total for all items on the estimate ranged from a low of \$1,777,230 (or 286.64 per square foot) to a high of \$2,143,651 (or 345.97 per square foot). Neither this document nor any of the other claim-related documents the Appellant submitted to the City included any costs associated with moving existing personal property from the Cleveland Street building. *Dr. John Brunsman Testimony; Exhibit A 32 (MR 266)*.
10. The City's agent, Mr. Reinhart, reviewed the information and provided a summary on July 12, 2013 to the Appellant's agent, Mr. Daniel, as to what he considered to be eligible expenses. He included the caveats, "My calculations have considered several items that would not be considered legally eligible under normal interpretations of the Uniform Act I feel strongly that if we were to try to find a specific CFR or RCW to match every detail of this move, the eligible reimbursements would be far less." *Exhibit A 40 (MR 300)*. Mr. Reinhart was not called as a witness at the hearing, but his written document indicated that he considered 3,258 square feet of the proposed improvements as needed to replace the *function* of the Cleveland Street business, whereas 695 square feet would

¹ The chart does not indicate an author, the Appellant did not clearly identify the author at the hearing, and the author was not called as a witness at the hearing. The document states, "Comparison is based on 2006 guidelines for design and construction standards for Health Care facilities as adopted by the State of Washington Health Services." The Hearing Examiner notes that the agency referenced does not exist under that specific title. In post-hearing briefing, the Appellant provided citation to WAC 246-330-505(2)(f), which references *2006 Guidelines for the Design and Construction of Healthcare Facilities*. However, he provided no excerpts from the manual, and no direction as to where the Hearing Examiner could access this document. The detailed requirements cited in the Appellant's brief do not appear in the WAC, and the Hearing Examiner could not verify the citations to the 2006 Guidelines.

represent replacement in kind, and the proposed 6,196 square feet would represent betterment of the existing business. He considered as eligible expenses "the amount of TI [tenant improvements] that is necessary for the attachment or function of the moved personal property," and calculated this "by measuring the square feet of the area that is necessary for the installation of the personal property and apply the overall TI cost to that eligible area." *Exhibit A 40 (MR 303)*. The cost he used was \$286.84 per square foot, and when he applied this to the area considered and added architectural fees and taxes, the resulting amount was \$512,240. *Exhibit A 40 (MR 303)*. Mr. Reinhart also considered \$74,320 in "Moving & Related" expenses, and \$100,000 in reestablishment expenses² to be eligible expenses in this correspondence. *Exhibit A 40 (MR 300)*.

11. On August 14, 2013, Mr. Reinhart sent a letter to Dr. Brunsman formally offering him \$640,000, including \$74,320 for moving existing equipment and furniture ("including disconnecting and reconnecting"), \$50,000 for reestablishment expenses, and \$512,240 for tenant improvements. As explained by Mr. Reinhart,

The portion of the tenant improvements estimate supplied by Wager Group, Inc. and Aldrich + Associates is based on the amount of square feet needed to modify the replacement site for the installation of the existing equipment and furniture. While it is recognized that a replacement site may be a larger area, the City cannot consider anything more than relocating and reestablishing the existing equipment, furniture, and features.

Exhibit A 43 (MR 314).

12. The \$74,320 in moving and related expenses included in the offer were based wholly on estimates generated by Mr. Reinhart; the Appellant never submitted estimated moving costs, and in fact ultimately abandoned much of his furniture and equipment. For the moving and related expenses Mr. Reinhart estimated \$4,575 for transportation of personal property, \$29,245 for "disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, appliances and other personal property ...", \$37,000 in professional fees to Mr. Daniel and to the Wager Group, and \$2,500 in real estate fees incurred searching for a replacement site. *Exhibit C 7 (MR 71-72); Exhibit A 43 (MR 318)*.
13. The City offered to make three even payments of \$213,333, with the first upon acceptance/acknowledgement of the terms of the letter (there was a space for Dr. Brunsman and the City to sign), the second upon documentation that a replacement site had been secured, and the third upon inspection of the vacated premises, for removal of personal possessions. *Exhibit A 43 (MR 315)*. Mr. Reinhart's offer letter was reviewed and approved by the City's right-of-way manager prior to sending. It was not presented

² While \$50,000 is the cap for reestablishment expenses specified in WAC 468-100-306, there are references in the record suggesting that at some point the City thought the Appellant might be eligible for costs for two businesses (see e.g., *Exhibit A 38 (MR 290)*). That is the only apparent basis for Mr. Reinhart's calculation of \$100,000 in reestablishment costs. The Appellant has not argued in these proceedings that he qualifies for consideration of a second business.

in the form of an appealable City decision. *Debby Wilson Testimony; Exhibit A 43 (MR 314-316)*.

14. One of the terms of the offer letter was as follows:

Along with the consideration for Redmond FCA, P.C. to vacate the premises, it is understood that upon receipt of the payment, or any portion of the payment for vacating the premises, Redmond FCA, P.C. hereby releases and forever discharges the City of Redmond, its elected and appointed officers, agents, and employees, from any and all claims, demands, liabilities, and causes of action of whatsoever kind or nature, known or unknown, past, present, or future, for out of pocket moving costs, storage costs, relocation costs, professional advice and/or services, or any other expense related to the vacation of Redmond FCA, P.C., including, but not limited to, any expense that could be claimed under the Uniform Real Property Acquisition and Relocation Assistance Act

Exhibit A 43 (MR 315).

15. The Appellant did not sign the letter accepting the City's offer because he believed the amount insufficient, and because he did not agree with the release from claims. He testified that even if he had known that the City would later offer less money (as described in the findings that follow), he still would not have accepted the \$640,000. *Dr. John Brunsman Testimony*.
16. The City commenced unlawful detainer proceedings on August 22, 2013. *Exhibit As 44 and 61 (MR 321 and 376)*. Although the Appellant testified that he vacated the premises on or about July 30, 2013, he did not notify the City and return the key until the end of August (his hand-written note to the mayor and the key did not arrive until August 29). When the Appellant vacated the property, he left behind much of his personal property, including some office furniture (chairs, desk), a copy/fax machine, an exam table, and miscellaneous smaller items. The City ultimately moved and stored these items. The Appellant eventually communicated to the City that he no longer wanted them. *Exhibits C 6 and 8 (MR 64, 65, 75-90); Exhibit A 61 (MR 376); Dr. John Brunsman Testimony*.
17. The City did not pay the Appellant pursuant to the August 14, 2013 offer. Ms. Wilson testified that she received feedback from her supervisors that relocation benefits should not be paid due to the eviction proceedings. *Debby Wilson Testimony; Exhibit A 44 (MR 322)*.
18. On December 22, 2014, the City sent the Appellant a reminder that the deadline for submitting claim information under the Relocation Act was January 31, 2015 (eighteen months from displacement date of July 31, 2013). *Exhibit C 9 (MR 92)*.
19. On December 1, 2015, Appellant's legal counsel submitted a written request to the City to reopen discussions of payment of Appellant's relocation expenses. On February 22, 2016, the City through its legal counsel declined to reopen discussions, and submitted

that the Appellant is not entitled to any relocation assistance. *Exhibits A 59 and 60 (MR 361-372)*.

20. Appellant filed a Petition for Judicial Review and Declaratory Relief on October 3, 2016, and a Motion for Partial Summary Judgment on February 10, 2017. *Exhibits A 62 and 66 (MR 379 and 399)*. On March 10, 2017, the Court found that the Appellant timely submitted a claim to the City, but that the City did not process the claim as required by WAC 468-100. The Court found that the City did not act in bad faith. The Court remanded the matter to the City "for processing Dr. Brunsman's claims in compliance with the applicable statutes and regulations" *Exhibit A 69 (MR 523-526)*.
21. On March 23, 2017, the City sent the Appellant a letter explaining that he might be eligible for relocation expenses and describing the costs that the City would consider (including moving and related expenses, and reestablishment expenses). The letter stated, "If you intend to seek relocation benefits, you must provide any information you wish the City to consider no later than May 1, 2017." *Exhibit C 12 (MR 101)*. With respect to moving and related expenses, the City requested that the Appellant provide documentation "of any actual expenses you would like to have considered. This would include copies of receipts, bills, appraisals, invoices, and any other evidence of moving expenses that you would like the City to consider. If evidence of expenses does not exist, provide detailed written information which explains reasons, dates, times, etc., that support the activity having occurred." *Exhibit C 12 (MR 102)*. The Appellant responded that, per the Court's decision, he had already submitted a claim, but submitted updated cost ranges to build out the ASC and associated clinic, reflecting an increase in costs from 2013, with a low of \$2.1 million to a high of \$2.86 million. This range was calculated by applying a Construction Cost Index to the amounts shown on the Aldrich + Associates estimates included in Exhibit A 32 at page 266 of record. The Appellant's updated costs did not include any costs associated with moving personal property. *Exhibit C 13 (MR 105- 109)*. The City further solicited information on the Appellant's moving costs on July 6, 2017; however the Appellant responded that he had no receipts for moving because he could not afford to move. The Appellant requested that the City provide compensation based on its previous estimate of \$74,320. *Exhibits C 14 and 15 (MR 111-118)*. The Appellant also submitted invoices for services provided by The Wager Group and by Martyn Daniel, which included interest accumulated on past due balances. *Exhibit C 15 (MR 121-124)*.
22. The City issued a Relocation Claim Determination on August 22, 2017, in which the City concluded that the maximum benefit payable was \$92,346.10, including \$50,000 for reestablishment expenses, \$20,110 for The Wager Group's services, and \$22,236.10 for Martyn Daniel's services; the professional services amounts excluded finance charges on past due amounts. No amount was provided for moving and related services under WAC 468-100-301(7)(a)-(k) and (m)-(q). The City explained its denial of these funds as follows:

No receipts or other evidence of actual moving costs or related expenses have ever been received to support any expenses which have been incurred. Before the space was

vacated, you provided the City with estimated costs of new possessions, but no estimates for moving existing possessions. The purchase of new furniture and equipment is not eligible for reimbursement, as expressly provided in WAC 468-100-306(2). Although the City estimated the cost of moving your existing possessions at \$37,320, that estimate was based on moving of possessions that you never actually moved....

Exhibit C 17 (MR 129).

23. The Appellant timely filed the instant appeal on October 16, 2017, raising the following (paraphrased) issues:
1. Disagreement with the facts underlying the City's determination;
 2. The City's determination is inconsistent with the intent of the Relocation Act to provide "a uniform policy for the fair and equitable treatment of persons displaced";
 3. The City is estopped from revoking its prior offer of \$640,000;
 4. The City's positions on WAC 468-100-301(7) are inconsistent, and the City must pay, at a minimum, the \$74,320 originally estimated. The City has an obligation to pay Appellant the approximate \$2 million requested to establish his business;
 5. The City must pay interim costs requested by Martyn Daniel on June 4, 2013; and
 6. The City's revocation of prior offer constitutes bad faith, and the City should be required to pay attorney's fees.

Exhibit A 76 (MR 560-62).

24. The interim costs referenced in item 5 of the Appeal are in an email from Mr. Daniel to Mr. Reinhart and Ms. Wilson dated June 4, 2013 (Exhibit A 35 (MR 280-81)). The email includes language suggesting that Dr. Brunzman had not yet found interim space: "He is hoping to find a currently available space Preliminary estimates for Dr. Brunzman's interim space may look something like the following" The email provided the following estimates:

One year rent	\$22,000	
Tenant Improvements	\$10,000	
Surgery facility rent	<u>\$10,000</u>	(based on \$500 per surgery and 20 surgeries during the year)
Total Interim Costs	\$42,000	

Exhibit A 35 (MR 281). Ms. Wilson didn't consider the email to be a claim, and did not pay the costs, because it was general in nature and didn't include supporting documentation. Also, she disagreed with the request for surgery facility rent, as she thought that cost could or should be passed on to patients. *Debby Wilson Testimony.*

25. The spaces in Redmond the Appellant has occupied since leaving the Cleveland Street address allow him to see patients but do not allow for operation of an ASC. *Dr. John Brunsman Testimony.*

CONCLUSIONS

Jurisdiction

The City's Hearing Examiner is granted authority to hear appeals from relocation assistance claim determinations pursuant to Ordinance 2894, which was passed by the City Council on October 17, 2017 and became effective on October 28, 2017

Applicable Law

Washington's Relocation Assistance Act (RCW 8.26 *et seq*) requires government agencies that displace a person or business when undertaking a public project to provide payment under the following categories:

- (a) Actual reasonable expenses in moving himself or herself, or his or her family, business, farm operation, or other personal property;
- (b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, in accordance with criteria established by the lead agency;
- (c) Actual reasonable expenses in searching for a replacement business or farm; and
- (d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria established by the lead agency, but not to exceed fifty thousand dollars or the dollar amount allowed under 42 U.S.C. Sec. 4622 as it existed on July 23, 2017, or such subsequent date as may be provided by the displacing agency by rule or regulation, consistent with the purposes of this section, whichever is greater.

RCW 8.26.035(1).

The Act's implementing regulations at WAC Chapter 468-100 further describe the agency's payment requirements. In the regulations, payments generally fall under three categories: moving expenses, related expenses, and reestablishment expenses. The regulations describing the eligible expenses are set forth in relevant part below.

WAC 468-100-207 General requirements – Claims for relocation payments.

1. Documentation. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or other evidence of such expenses. Payment for a low cost or uncomplicated move may be made without documentation of actual costs when payment is limited to the amount of the lowest acceptable bid or estimate obtained by the agency. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

2. Expeditious payments. The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.
3. Advance payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.
4. Time for filing.
 - a. All claims for a relocation payment shall be filed with the agency within eighteen months after:
 - i. For tenants, the date of displacement;
 - ii. For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.
 - b. This time period shall be waived by the agency for good cause.
5. Notice of denial of claim. If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.
6. No waiver of relocation assistance. A displacing agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.
7. Expenditure of payments. Payments, provided pursuant to this part, shall not be considered to constitute federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

WAC 468-100-301 Payment for actual reasonable moving and related expenses.

1. General.
 - a. Any owner-occupant or tenant who qualifies as a displaced person...who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary....

...
4. Moves from a business, farm or nonprofit organization. Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods: Eligible expenses for moves from a business, farm or nonprofit organization include those expenses described in subsection (7)(a) through (g) of this section and subsection (7)(k) through (r) of this section and WAC468-100-303.
 - a. Commercial move. Based on the lower of two bids or estimates prepared by a commercial mover. At the agency's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate.
 - b. Self-move. A self-move payment may be based on one or a combination of the following:
 - i. The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person. At the agency's discretion, payment for a low-cost or uncomplicated move may be based on a single bid or estimate; or

- ii. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover....

...

7. Eligible actual moving expenses.

- a. Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty miles are not eligible, unless the agency determines that relocation beyond fifty miles is justified.
 - b. Packing, crating, unpacking, and uncrating of the personal property.
 - c. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by federal, state or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property (expenses for providing utilities from the right of way to the building or improvement are excluded).
 - d. Storage of the personal property for a period not to exceed twelve months, unless the agency determines that a longer period is necessary.
 - e. Insurance for the replacement value of the property in connection with the move and necessary storage.
 - f. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
 - g. Other moving-related expenses that are not listed as ineligible under subsection (8) of this section as the agency determines to be reasonable and necessary.
- ...
- k. Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.
 - l. Professional services as the agency determines to be actual, reasonable and necessary for:
 - i. Planning the move of the personal property;
 - ii. Moving the personal property; and
 - iii. Installing the relocated personal property at the replacement location.
 - m. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
 - n. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
 - i. The fair market value in place of the item, as is for continued use, less the proceeds from its sale (to be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not

necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling prices); or

- ii. The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of fifty miles.
 - o. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
 - p. Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
 - i. The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
 - ii. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low-cost or uncomplicated move may be based on a single bid or estimate.
 - q. Searching for a replacement location....
8. Ineligible moving and related expenses. A displaced person is not entitled to payment for: ...
- j. Physical changes to the real property at the replacement location of a business or farm operation except as provided in WAC 468-100-301 (7)(c) and 468-100-306(1);

WAC 468-100-303 Related nonresidential eligible expenses.

The following expenses, in addition to those provided by WAC 468-100-301 for moving personal property, shall be provided if the agency determines that they are actual, reasonable and necessary:

1. Connection to available nearby utilities from the right of way to improvements at the replacement site.
2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the agency a reasonable preapproved hourly rate may be established.
3. Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the agency.

WAC 468-100-304 Fixed payment for moving expenses – Nonresidential moves.

1. Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by WAC 468-100-301, 468-100-303, and 468-100-306. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with subsection (5) of this section, but not less than one thousand dollars nor more than twenty thousand dollars. The displaced business is eligible for the payment if the agency determines that:

- a. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site;
 - b. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;
 - c. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;
 - d. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;
 - e. The business is not operated at the displacement site solely for the purpose of renting the site to others; and
 - f. The business contributed materially (defined in WAC 468-100-002(7)) to the income of the displaced person during the two taxable years prior to displacement.
2. Determining the number of businesses. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:
- a. The same premises and equipment are shared;
 - b. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
 - c. The entities are held out to the public, and to those customarily dealing with them, as one business; and
 - d. The same person or closely related persons own, control, or manage the affairs of the entities.
- ...
5. Average annual net earnings of a business or farm operation. The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the agency determines is satisfactory.

WAC 468-100-306 Reestablishment expenses – Nonresidential moves.

In addition to the payments available under WAC 468-100-301 and 468-100-303, a small business, as defined in WAC 468-100-002(24), farm or nonprofit organization is entitled to receive a payment, not to exceed fifty thousand dollars, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

1. **Eligible expenses.** Reestablishment expenses must be reasonable and necessary, as determined by the agency. They include, but are not limited to, the following:
 - a. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.
 - b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - c. Construction and installation costs for exterior signing to advertise the business.
 - d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
 - e. Advertisement of replacement location.
 - f. Estimated increased costs of operation during the first two years at the replacement site for such items as:
 - i. Lease or rental charges;
 - ii. Personal or real property taxes;
 - iii. Insurance premiums; and
 - iv. Utility charges, excluding impact fees.
 - g. Other items that the agency considers essential to the reestablishment of the business.
2. **Ineligible expenses.** The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
 - a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
 - b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
 - c. Interest on money borrowed to make the move or purchase the replacement property.
 - d. Payment to a part-time business in the home which does not contribute materially to the household income.
 - e. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in WAC 468-100-306 (1)(d).

Conclusions Based on Findings

1. The City's August 22, 2017 relocation assistance claim determination, which made payment to \$92,340.10, is consistent with WAC 468-100 and was not in error.
 - a. The City's payment of submitted professional services invoices was consistent with WAC 468-100-301(7)(1) and WAC 468-100-303(2), which identify professional services as "related expenses." It was reasonable for the City not to reimburse for late fees, as the Appellant did not submit invoices to the City for payment until the fees were already past due. The record presented fails to show any obligation on the part of the City to cover the late fees incurred. *Findings 21 and 22.*

- b. Consistent with WAC 468-100-306(2)(a), the City properly withheld payment for \$361,913 in new furnishings. *Finding 4.*
- c. The costs shown on the Aldrich + Associates estimate are properly characterized as "reestablishment expenses." WAC 468-100-306 is unambiguous that modifications of the replacement property to accommodate the business, and repairs and improvements to the replacement property as required by law, are reestablishment expenses, which are limited to \$50,000. Further, WAC 468-100-301 explicitly excludes "physical changes to the real property at the replacement location" as a compensable *moving* expense, while recognizing that such physical changes may be compensable as a reestablishment expense. Per WAC 468-100-306, the City properly capped the paid reestablishment expenses at \$50,000. *Findings 5, 6, and 9.*
- d. Pursuant to WAC 468-100-010(2), the Appellant is only entitled to only such benefits as are specifically delineated in WAC 468-100. Mr. Reinhart's 2013 offer was not dispositive as to Relocation Act requirements; even he believed that what was offered exceeded the amount required under the Act. A significant point of deviation from the Act was the offered \$512,240 in "tenant improvements," which is not a distinct statutory expense category. While WAC 468-100-301(7)(c) requires payment for costs associated with reassembling and reinstalling relocated personal property, costs to modify the personal property, and costs associated with adapting the *utilities* at the replacement site to the relocated property, it does not provide for the type of improvements contemplated in the "tenant improvements," which were based on the Aldrich + Associates estimate. These would have been properly characterized as "reestablishment expenses." Mr. Reinhart separately calculated the installation/utilities expenses covered by WAC 468-100-301(7)(c) to be \$29,245 and included them in the \$74,320 in moving and related expenses. *Findings 10, 11, and 12.*
- e. The City included a portion of Mr. Reinhart's estimated \$74,320 in moving and related expenses in the \$92,340.10 paid to the Appellant (i.e., the portion comprising professional fees). The City's decision to not award the remainder (i.e., the transportation and reinstallation expenses) was not in error. Circumstances changed shortly after Mr. Reinhart made his initial offer, in that the Appellant abandoned much of the personal property that would have been included in the estimate. At no time did the Appellant submit any evidence that he incurred, or would incur, costs associated with moving or reinstalling personal property. Under the Act, payment is only to be made for "actual" expenses, not hypothetical expenses. Pursuant to WAC 468-100-207(1), "[a]ny claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as, bills, certified prices, appraisals, or other evidence of such expenses." The Appellant never submitted this required documentation. *Findings 12, 16, 21, and 22.*

- f. Even if the \$50,000 cap on reestablishment expenses did not apply to the Aldrich + Associates estimate, the City is not obligated to pay the estimated amount because it far exceeds what is "reasonable and necessary" pursuant to WAC 468-100-301(1)(a). The proposed floor plan is ten times larger than the Cleveland Street facility, and the record presented does not show that the proposed scale and level of amenity at the new facility are necessary to reestablish the business in a manner comparable to that which existed at the time of displacement. *Findings 2, 3, 6, 7, and 8.*
- g. The City's determination not to award interim costs was not in error. The information contained in the June 4, 2013 email from Mr. Daniel was extremely general in nature and admittedly preliminary. Even if the email were treated as a claim, it would not result in additional funds for the Appellant. The requested rent items are covered under "reestablishment expenses," which are limited to \$50,000 total. The interim costs would have only been an advance on the \$50,000 ultimately rewarded, not a separate reimbursement item. With respect to the \$10,000 in tenant improvements, the Appellant provided no information as to the nature of these expenses; if they were structural improvements they would also be subject to the \$50,000 cap in reestablishment expenses. The Appellant was invited to provide more cost information on multiple occasions (including after the time period in which interim costs would have been first incurred), but chose not to do so. Pursuant to WAC 468-100-207(1), the City had no obligation to release funds for undocumented expenses. *Findings 21 and 24.*

It is important to note that the June 4, 2013 email regarding interim expenses did not include a request for moving expenses associated with the Appellant's personal property still stored at the Cleveland Street location. The Appellant has argued that he did not move in response to the City's eviction notices because he could not afford the move; yet at no time did he or his agent present to the City an estimate for moving and storage, and he made no request that the funds be released in advance due to hardship. *Findings 21 and 24.*

- h. The Appellant argued at length that the City's final reimbursement determination violated the purposes of the Relocation Act (RCW 8.26.010). However, the record contains no citation to authority for using the purpose language to override the plain language defining reestablishment expenses and expressly limiting them to \$50,000. The Appellant has not demonstrated that the City's determination was in error. *Finding 23.*
2. With regard to the contention that the City is equitably estopped from offering less than the August 2013 \$640,000 offer, the Appellant failed to establish the elements of equitable estoppel, which require "clear, cogent, and convincing evidence."
Kramarevsky v. State, Dep't of Soc. & Health Servs., 64 Wn. App. 14, 19, 822 P.2d 1227

(1992).³ The elements that must be proved are: "(1) a statement, admission, or act by the party to be estopped, which is inconsistent with its later claims, (2) the asserting party acted in reliance upon the statement or action, (3) injury would result to the asserting party if the other party were allowed to repudiate its prior statement or action, (4) that estoppel is 'necessary to prevent a manifest injustice,' and (5) estoppel will not impair governmental functions." *Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.*, 159 Wn.2d 868, 887, 154 P.3d 891 (2007) (quoting *Kramarevcky v. State, Dep't of Soc. & Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993)).

While it is the Hearing Examiner's opinion that the Appellant has not shown that any of the elements have been satisfied, elements (2), (3), and (4) in particular weigh against the appeal, as described in more detail below.

- a. Element 2: The Appellant did not establish that he acted in reliance on the City's statement or action. He testified that he refused the offer because he considered (and still considers) the offered money inadequate to reestablish the ASC; no evidence was submitted that he took steps to reestablish the ASC. As shown by his abandonment of personal property, he did not act in reliance on the moving component of the offer. *Findings 15 and 16.*
- b. Element 3: While the Appellant testified that his business has suffered without reestablishment of the ASC, no evidence was submitted that injury would result if the City were not required to pay the amount originally offered. This relates back to the reliance issue. The portion of the offer that related to expenses actually incurred - payment of professional fees for architect and relocation specialist services - was included in the City's August 22, 2017 determination. It was reasonable for the City to exclude late fees from the ultimate payment amount. *Finding 22.*
- c. Element 4: No manifest injustice has been shown. The Appellant was provided an offer that exceeded the minimum required assistance by the Relocation Assistance Act, and the City's agent communicated as much to the Appellant's agent. The Appellant chose not to accept the offer. The record contains no evidence that he took action in reliance on the initial offer. Assuming the City had chosen to honor the original offer, the Appellant's testimony suggests that he needed upwards of \$2,000,000 in order to reestablish the ASC. If that is true, payment of the initially offered \$640,000 would still not have resulted in a new ASC. The Appellant had opportunity to submit evidence of reasonable moving

³ Pursuant to *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984), City Hearing Examiners are "[a]dministrative agencies [which] are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." The Chaussee decision expressly establishes that city councils lack equitable authority to confer upon Hearing Examiners. However, to the extent that the instant proceedings imbue locally-appointed decision makers with equitable authority, these conclusions are entered addressing Appellant's equitable arguments. Should a reviewing body determine that the undersigned lacks equitable authority, these conclusions on estoppel may be stricken - or treated as recommendation rather than decision - without altering the result of the instant decision.

expenses and chose not to do so. Estoppel is not needed to prevent a manifest injustice in this case. *Findings 10, 11, 15, 16, 20, and 21.*

3. Addressing the Appellant's argument that the form of the City's initial 2013 offer of \$640,000 was unlawful because it required his release of all future claims in contravention of WAC 468-100-207(6), the undersigned is persuaded that the Appellant has misinterpreted the regulations. The stated purposes of the Relocation Assistance Act include reduction of litigation and relief of congestion in court schedules. The August 2013 offer included coverage for tenant improvements not compensable under a strict application of the law, as noted by the communication attached to the offer. If even an offer exceeding the minimum assistance that could be required under the Act cannot be finalized through a negotiated release of future claims, litigation would be endless. *Findings 10, 14, and 15.*
4. The Appellant failed to establish authority for the City's Hearing Examiner to award attorney's fees, and in any event, no attorney fee evidence was submitted. Per WAC 468-100-301(8)(h), legal fees associated with preparation of a claim for relocation payment or for representing the claimant before the agency are not eligible moving and related expenses. Further, the Appellant has not shown evidence of bad faith in the City's processing of his claim in response to the trial court's remand; events prior to the date of the remand are addressed by the Court's determination that the City had not acted in bad faith. The City allowed the Appellant an opportunity to submit additional information in support of his claim even though the time period for claims had passed. As concluded above, the City's ultimate relocation assistance payment determination was consistent with the applicable regulations. *Findings 21 and 22.*
5. All evidence and arguments not addressed in these findings and conclusions were, respectfully, found to be unpersuasive.

DECISION AND ORDER

The appeal of the August 22, 2017 relocation claim determination by the City of Redmond for Dr. Brunsman's relocation from 16146 NE Cleveland Street is **DENIED**.

Decided March 7, 2018.

By:



Sharon A. Rice
Redmond Hearing Examiner

Appendix A, Exhibits:

The following exhibits were admitted in the record:

Appellant's Exhibits (identified in Findings by A prefix)

1. Letter from Donald Jaques, Survey and Certification Operations Branch, Division of Health Standards and Quality, to Dr. John Brunsman, dated April 13, 1994
2. Relocation brochure, *Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*, U.S. Department of Transportation Federal Highway Administration, dated November 17, 2011
3. Displacement of business due to City downtown park project, relocation summary of moving and reestablishment expenses, dated March 13, 2012
4. Letter from Martyn Daniel, LLC to John Brunsman regarding proposal for consulting services regarding business relocation needs related to the City of Redmond project, dated March 22, 2012
5. Letter from Martyn Daniel to John Brunsman including executed proposal for consulting services regarding business relocation needs related to the City of Redmond project, dated March 22, 2012
6. Letter from City of Redmond to John Brunsman regarding relocation assistance and general notice of relocation rights lease pertaining to Redmond's Downtown Central Park, dated April 11, 2012
7. Letter from John Brunsman to Martin Daniel summarizing progress of relocation process, dated April 16, 2012
8. Email from Debby Wilson, City of Redmond, to Steve Reinhart, Universal Field Services, Inc., and Jean Rice regarding tenant at 16146 Cleveland Street and meeting to discuss City's property purchase and confirm leasehold interests, dated April 18, 2012
9. Fax from Martyn Daniel to John Brunsman, dated May 7, 2012
10. Washington State Department of Health Ambulatory Surgical Facility License for Foot Care Associates, dated July 2, 2012
11. Information from Commercial Brokers Association Member Site regarding Windermere Building at 16261 NE Redmond Way, Redmond WA 98052, with attachments, dated August 14, 2012
12. Email correspondence between Steve Reinhart to Susan Burns and Martyn Daniel regarding moving and related expenses and reestablishment summaries (attached), dated August 22, 2012
13. Fax from Martyn Daniel to John Brunsman regarding flyers from Ray West of AGM Real Estate (attached), dated September 13, 2012
14. Letter from Debby Wilson to John Brunsman regarding Redmond's Downtown Central Park Vacate Notice, dated October 10, 2012
15. Professional Services Authorization Agreement between Foot Care Associates and The Wager Group, Inc., dated October 17, 2012

16. Fax from Martyn Daniel to John Brunzman regarding Michael Wager's proposal for review (attached), dated October 19, 2012
17. Email from Steve Reinhart to Debby Wilson regarding architect report, dated October 25, 2012
18. Email from Martyn Daniel to Steve Reinhart regarding proposal from Michael Wager, dated October 30, 2012
19. Fax from Martyn Daniel to John Brunzman regarding lease payments and request for advance payments, dated November 19, 2012
20. Email from Steve Reinhart to Debby Wilson regarding a potential site and cost estimates from The Wager Group, Inc. and Martyn Daniel, dated December 10, 2012
21. Fax from John Brunzman to Martyn Daniel including sample of cost approach summary and background of Michael Wager at The Wager Group, Inc. (attached), dated December 12, 2012
22. Fax from John Brunzman from to Steve Reinhart, dated January 8, 2013
23. Fax from John Brunzman to Mike Wager regarding meeting at Mike Wager's office with drawings of Eye Doctor Building, dated January 8, 2013
24. Letter from Rob Forenza, Applied Capital, LLC, to Rania Montecillo, Redmond Eye Doctors, dated February 6, 2013
25. Letter of Understanding from Jonathan Fast, Aldrich + Associates, to confirm the intent to proceed with Aldrich + Associates, Inc., dated February 20, 2013
26. Email from Steve Reinhart to Debby Wilson regarding moving to a property on 164th Avenue in Redmond, dated February 21, 2013
27. Memo from Jonathan Fast to John Brunzman providing plans and identifying specific DOH requirements/certifications for new facility, dated April 25, 2013
28. Fax from John Brunzman to Rob Forenza regarding the latest copy of the floor plan for the ASF (attached), dated May 7, 2013
29. Email from Mason Darnall to Debby Wilson and Jean Rice regarding enclosed check # 67233539, dated May 10, 2013
30. Aldrich + Associates, Inc. rough order of magnitude cost projection, dated May 13, 2013
31. Letter from Debby Wilson to John Brunzman regarding the date of demolition activity to the property on Cleveland Street, dated May 24, 2013
32. Copy of Aldrich + Associates and The Wager Group, Inc. business cards, with attachments including spreadsheets showing code requirements, dated May 29, 2013
33. Fax from John Brunzman to Martyn Daniel regarding drawings and photos relating to Doctors Plaza (attached), dated June 3, 2013
34. Fax from Martyn Daniel to Debby Wilson and Steve Reinhart regarding clarification and support offered to help determine John Brunzman relocation costs, dated June 4, 2013

35. Email correspondence between Steve Reinhart and Debby Wilson and related letter from Martyn Daniel regarding an unlawful detainer action and estimated move costs (attached), dated June 5, 2013
36. Fax from Martyn Daniel to John Brunzman regarding meeting discussing eligible reimbursable costs and equipment list (attached), dated June 17, 2013
37. Email from Steve Reinhart to Martyn Daniel and Debby Wilson regarding review of John Brunzman's expenses for equipment and furniture, dated July 8, 2013
38. Email from Debby Wilson to Steve Reinhart regarding summons to start eviction, dated July 10, 2013
39. Email from Steve Reinhart to Debby Wilson regarding relocation package discussion and capital expenditures for equipment, estimated moving and related expenses summary, and tenant improvements (attached), dated July 10, 2013
40. Email from Steve Reinhart to Martyn Daniel regarding eligible expenses and settlement costs, dated July 12, 2013
41. Email correspondence between Steve Reinhart, Debby Wilson, and Martyn Daniel regarding the summary of eligible expenses and reimbursement considerations, dated July 31, 2013
42. Email from Debby Wilson to Michelle Love, Susan Cooper, and Aaron Riensche, Ogden Murphy Wallace, regarding John Brunzman's occupancy just before demolition, dated August 2, 2013
43. Letter from Steve Reinhart to John Brunzman regarding review of relocation documents, dated August 14, 2013
44. Email from Steve Reinhart to Debby Wilson regarding the settlement offered to John Brunzman, dated September 3, 2013
45. Email correspondence between Martyn Daniel and Debby Wilson discussing terms of relocation offer, dated September 23, 2013
46. Email correspondence between Debby Wilson and Martyn Daniel regarding relocation offer and unlawful detainer activities, filings, and related expenses, dated September 27, 2013
47. Email correspondence between Martyn Daniel and Debby Wilson regarding relocation offer and personal property, dated October 7, 2013
48. Email correspondence between Sandra Cantelon and Debby Wilson regarding the status of John Brunzman's water account, dated October 7, 2013
49. Email from Steve Reinhart to Debby Wilson with attachments providing estimates from Aldrich + Associates, Inc. and The Wager Group, Inc., dated January 22, 2014
50. Email from Kelley Wood, City of Redmond Treasury and Revenue Manager, to Gini M. Schacker regarding credit due to John Brunzman (et al), dated April 14, 2014
51. Email from Susan Cooper, Executive Assistant to the Mayor, to Debby Wilson, dated May 7, 2014

52. Letter from Martyn Daniel to John Marchione, Mayor of Redmond, regarding the City's letter sent to Patty Murray's office, dated May 6, 2014
53. Letter from Debby Wilson to John Brunsman regarding the due date (January 31, 2015) for submitting all claims for relocation expenses, dated December 22, 2014
54. Email correspondence between Debby Wilson and Martyn Daniel regarding the City's refusal to pay a third party (Martyn Daniel) for relocation/reestablishment expenses, dated July 31, 2015
55. Email from Betty Sanders, Senior Park Planner, to Debby Wilson regarding John Brunsman's relocation expenses, dated April 21, 2015
56. Email from Martyn Daniel to Debby Wilson requesting status of relocation payment, dated May 19, 2015
57. Email from Debby Wilson to Martyn Daniel regarding status of relocation matter, dated May 19, 2015
58. Email from Kelley Wood to Debby Wilson requesting status of John Brunsman matter, dated August 3, 2015
59. Letter from Todd Wyatt, Carson & Noel PLLC, to Mayor John Marchione, including Counsel's Notice of Appearance, dated December 1, 2015
60. Letter from James Haney, Ogden Murphy Wallace, to Stacy Goodman and Todd Wyatt regarding relocation of Foot Care Associates, dated February 22, 2016 and received by the Mayor's office on February 24, 2016
61. Email from Debby Wilson to Carolyn Hope regarding Downtown Park and John Brunsman and spreadsheet of history notes (attached), dated September 6, 2016
62. King County Superior Court Pleading, regarding Petitioner John Brunsman and Respondent City of Redmond, from Todd Wyatt to Aaron Riensche, Petition for Judicial Review and Declaratory Relief, dated October 3, 2016
63. Email from Carolyn Hope to Steven Gibbs regarding Downtown Park project status update meeting, dated October 14, 2016
64. Email from Lisa Singer to Mike Paul regarding the Downtown Park budget, dated October 21, 2016
65. King County Superior Court Pleading, regarding Petitioner John Brunsman and Respondent City of Redmond, from Aaron Riensche to Todd Wyatt, Respondents, Answer to Petition for Declaratory Relief, dated December 23, 2016
66. King County Superior Court Pleading, John Brunsman's Motion for Partial Summary Judgment with related attachments, dated February 10, 2017
67. King County Superior Court Pleading, Respondent's Opposition to Petitioner's Motion for Partial Summary Judgment with related attachments, dated February 27, 2017
68. King County Superior Court Pleading, Petitioner's Reply in Support of Motion for Partial Summary Judgment, dated March 6, 2017

69. King County Superior Court Pleading, Order Granting in Part and Denying in Part Petitioner John Brunzman's Motion for Partial Summary Judgment, dated March 10, 2017
70. Letter from City of Redmond to John Brunzman/Redmond Foot Care Associates regarding relocation assistance/relocation claim request, with attached documents, dated March 23, 2017 and received at Carson & Noel PLLC on March 27, 2017
71. Letter from Todd Wyatt to City of Redmond regarding the City's March 23, 2017 letter to John Brunzman, dated May 1, 2017
72. Letter from Aaron Riensche to Todd Wyatt, dated July 6, 2017
73. Letter from Todd Wyatt to the City of Redmond responding to Aaron Riensche's July 6, 2017 letter, dated August 15, 2017
74. Letter from Aaron Riensche to Todd Wyatt responding to the August 15, 2017 letter relating to John Brunzman's relocation benefits determination, dated August 23, 2017
75. Letter from City of Redmond to Todd Wyatt regarding Redmond Downtown Park Relocating/Reestablishment claim check # 408815 in the amount of \$92,346.10, dated August 31, 2017
76. Letter from Todd Wyatt to City of Redmond and Aaron Riensche regarding Foot Care Associates/John Brunzman Notice of Appeal, dated October 16, 2017
77. Spread Sheet from Aldrich + Associates regarding breakdown costs for tenant improvements to clinic/operating facility, undated
78. Drawing of FCA ambulatory surgical facility preliminary floor plan for the 2nd floor, undated

City of Redmond Exhibits (identified in Findings by C prefix)

1. Letter from Debby Wilson to John Brunzman regarding Redmond's Downtown Central Park, with attached lease, dated April 11, 2012
2. Letter from Debby Wilson to John Brunzman regarding Redmond Downtown Central Park, Vacate Notice, dated October 10, 2012
3. Letter from Debby Wilson to John Brunzman regarding Redmond's Downtown Central Park, 16146 Cleveland Street, dated May 24, 2013
4. Meeting notes, meeting with John Brunzman, Martyn Daniel, Debby Wilson, Jonathan Fast, and Michael Wager, including estimates, (document that Judge Spearman found to be a timely claim for relocation benefits), dated May 29, 2013
5. Email from Martyn Daniel to Debby Wilson and Steve Reinhart regarding John Brunzman including estimates for interim costs at \$42,000 for rent and tenant improvements, dated June 4, 2013
6. Letter from Michelle Love, VFW Post 91, to the Mayor of Redmond, containing handwritten note from John Brunzman including key (stating that John Brunzman vacated the subject premises on July 30, 2013), dated August 2, 2013

7. Letter from Steve Reinhart to Redmond FCA, P.C. regarding relocation of Redmond FCA, P.C. and offering John Brunsman \$640,000 as full and final satisfaction of his relocation claim, dated August 14, 2013
8. Photographs of subject space, showing furniture, equipment, and office supplies abandoned in subject space, dated August 29, 2013
9. Letter from Debby Wilson to John Brunsman regarding Redmond's Downtown Central Park, 16146 NE Cleveland Street, submittal of final relocation/reestablishment claim documents, dated December 22, 2014
10. Order Granting in Part and Denying in Part Petitioner John Brunsman's Motion for Partial Summary Judgment, King County Superior Court No. 16-2-23879-3, dated March 10, 2017
11. Email from Stacy Goodman to Aaron Riensche regarding Brunsman v. City of Redmond, dated March 21, 2017
12. Letter from Debby Wilson to John Brunsman regarding relocation assistance/relocation claim request, Redmond Downtown Park, 16146 NE Cleveland Street, dated March 23, 2017
13. Letter from Todd Wyatt to the City of Redmond regarding relocation assistance, dated May 1, 2017
14. Letter from Aaron Riensche to Todd Wyatt regarding Foot Care Associates/John Brunsman/City of Redmond, dated July 6, 2017
15. Letter from Todd Wyatt to the City of Redmond regarding Foot Care Associates/John Brunsman/City of Redmond, dated August 15, 2017
16. Letter from Aaron Riensche to Todd Wyatt regarding John Brunsman relocation benefits determination, dated August 23, 2017
17. Letter from Debby Wilson to John Brunsman regarding relocation claim determination approved amount of \$92,346.10, dated August 22, 2017
18. Letter from Debby Wilson to Todd Wyatt regarding Redmond Downtown Park, relocation/reestablishment claim check, Foot Care Associates, 16146 NE Cleveland Street, dated August 31, 2017
19. Letter from Todd Wyatt to the City of Redmond and Aaron P. Riensche regarding Foot Care Associates/John Brunsman/City of Redmond – Notice of Appeal, dated October 16, 2017

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Appendix B

Other items included in the record of the instant proceedings include the following:

- Order Setting Hearing and Pre-Hearing Document Exchange, November 3, 2017
- Appellant's Motion to Dismiss, November 20, 2017
- Order Setting Response Schedule on Receipt of Appellant's Motion to Dismiss, November 20, 2017
- City's Objection to Change of Forum, November 28, 2017
- Appellant's Reply to City's Objection, December 6, 2017
- Ruling and Order on Appellant's Motion to Dismiss, December 11, 2017
- Appellant's Witness and Exhibit List, December 15, 2017
- City of Redmond's Designation of Witnesses and Exhibits, December 15, 2017
- Appellant's Prehearing Brief, December 22, 2017
- City of Redmond's Pre-Hearing Brief, December 22, 2017
- Appellant's Closing Brief, January 24, 2018
- City of Redmond's Closing Brief, January 24, 2018

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Appendix C, Post-Order Remedies:⁴

The following statement of remedies is provided consistent with WAC 10-08-210:

Any party dissatisfied with the instant decision and order may request reconsideration pursuant to WAC 10-08-215/RCW 34.05.470. Note: Regarding reconsideration, the identified state provisions are supplemented by the City of Redmond Hearing Examiner Rules of Procedure. Also note that pursuant to RCW 34.05.470(5), the filing of a request for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to RCW 34.05.514, proceedings for judicial review may be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

⁴ The implementing regulations for the Relocation Assistance Act (RCW 8.26) include some provisions addressing appeals at WAC 486-100-010(6), which refer to WAC 10-08 (model rules of procedure for the Administrative Procedures Act) for supplemental procedural provisions. WAC 10-08-210 establishes both an initial and a final order resulting from adjudicative proceedings, depending on the nature of the presiding official. Ordinance 2894 is silent as to whether the Hearing Examiner's decision is an initial or final order. Because Ordinance 2894 does not establish a process by which an "agency head" (other City of Redmond official) will review the Hearing Examiner's order, the instant decision is written as a final order. If a reviewing body determines this to be procedurally incorrect, it may be treated as an initial order subject to a petition for review as established in WAC 10-08-211.