

substantially identical (in terms of parties, records, and ultimate impact on the Applicant's ability to proceed), the parties agreed to stay the instant appeal, wait for issuance of the subsequent permits, which the Applicant has indicated it intends to submit by March 21st, and allow completion of the appeal period, which is projected to run through April 28th.

RZC 21.76.040.D.2.a requires a decision to be issued within 90 days of a timely requested appeal. Given the circumstances above and in the interest of economy, the Applicant and the City agreed to waive the 90 day deadline consistent with RZC 21.76.040.D.2.c. The Applicant's agreement to waive this timeframe was premised on the instant appeal being completed with all due haste and efficiency in scheduling.

Another factor raised at the conference that affected scheduling was Applicant's counsel's pre-scheduled unavailability between April 27th and May 15th. Waiting until after counsel's return to begin the pre-hearing process would result in a delay in the Applicant's ability to proceed with the project that is not desirable to the Applicant. During the conference, counsel for the Applicant was unable to confirm with attorneys from her office about their availability during her absence.

The conference ended with an agreement by the parties that communication would continue via email in order to establish dates for scheduling dispositive motions, responses, ruling, witness/exhibit list exchange, exhibit exchange, and the hearing itself.

The communication proceeded as planned via email and the parties reached agreement by the end of the following business day. Dates agreed to in writing via email by all parties are memorialized in the Order below.

This unusual scheduling process, based on the need to consolidate appeals of future permits with the instant appeal, was premised on the Applicant's timely submittal of the required application(s), the City's timely processing of the applications in accordance with code- or standard policy-established timeframes, and expiration of the requisite appeal period(s). All parties acknowledged that should there be delay in application submittal or processing, there will likely be a need to continue the selected hearing date and set a new schedule. Still, all parties agreed to the schedule below in an effort to proceed as expeditiously as possible.

This Order provides information to the parties to facilitate their participation and promote efficiency of the proceedings.

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.

- 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 also establishes pre-hearing information exchange deadlines with which all parties must comply.

Order

Hearing Scheduling

1. **The appeal hearing is scheduled in the Redmond City Council Chambers on May 31, 2017 at 1:00 pm.** The hearing will proceed until the appeal is completed with breaks as appropriate.

Motions

2. All dispositive motions shall be submitted by May 1, 2017.
3. Parties shall have until May 8, 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 May 11, 2017.

Document Exchange

5. The parties shall submit Witness and Exhibit Lists (explained below) not later than May 17, 2017.
6. On or before May 24, 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.
7. Legal briefing, if any, shall be submitted at or after the hearing. Deadlines for post-hearing briefing and/or responses, if any, shall be established on the record at hearing.

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

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

9. **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)

10. 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, but that does not affect numbered exhibit lists.

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 four 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. 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.
17. 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 March 17, 2017.

By:



Sharon A. Rice
Redmond Hearing Examiner