

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

In the Matter of the Appeal of)	NO. _____
)	
Emerald Heights)	
)	
)	Emerald Heights Assisted Living Appeal
of the December 8, 2017)	
Denial of Requested Extensions for)	
BLDG-2017-03284 and BLDG-2017-03308)	
and of the December 12, 2017)	ORDER SETTING HEARING AND
Termination of Site Plan Entitlement)	PRE-HEARING DOCUMENT
LAND-2016-01735)	EXCHANGE SCHEDULE
_____)	

A pre-hearing conference was convened on December 5, 2018 to expedite efficient proceedings in the above captioned appeal, which was timely filed on December 20, 2017. The purpose of the conference was to clarify the issues on appeal, if needed, and to determine the pre-hearing 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 Emerald Heights:

Molly Lawrence, Attorney
Clara Park, Attorney

For the City:

Jim Haney, Attorney
Ben Sticka, Planner
Steven Fischer, Development Services Planning Manager

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.

Discussion of Other Pre-Hearing Procedural Issues

Dispositive Motions: Neither party anticipates filing dispositive motions.

Discovery: Counsel for the Appellant indicated that they are awaiting responses to public information requests which they anticipate receiving by February 9, 2018, and that they will not know until then whether any additional discover is needed. However, because they desire to reach a decision on the appeal as soon as possible, the Appellant is not likely to file motions that would alter the schedule and delay the hearing date.

Briefing: During the conference call, the topic of whether the parties intend to submit briefing was inadvertently omitted from the scheduling discussion. This order will set a due date for briefing, if either party desires to brief their arguments in advance.

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.
- The Appellant would have an opportunity to present rebuttal evidence, if any.
- Closing arguments would be heard first from the City and then 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 March 9, 2018 at 9:00 am.** The hearing will proceed until the appeal is completed with breaks as appropriate.

Motions

2. No motions schedule was established. The parties may include dispositive motions in pre-hearing briefing, which would be addressed in the decision document.

Document Exchange

3. The parties shall submit Witness and Exhibit Lists (explained below) not later than February 23, 2018.

4. By March 2, 2019, 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.
5. Pre-hearing briefing, if any, shall be submitted on March 2, 2018.
6. Should witnesses and exhibits disclosed by one party cause the other party to offer additional witnesses or exhibits, these 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 party's original list left off.
7. 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 late disclosure of witnesses and/or exhibits cause undue surprise to any party at hearing, the record may be held open to allow written/ documentary rebuttal after adjournment.

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**. In the decision document each party will be assigned a prefix (e.g., E.1-[x] and C.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 or less 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 shall be exchanged via email.**
12. If a very large number of exhibits are exchanged, the Clerk's Office will determine whether to create and distribute a master record including all exhibits, bates stamped for

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.

ease of reference during the hearing. If such a master record is prepared, it will be circulated by email within one or two weeks of the hearing. Each party will be required to print their own copies of the master record for use during the hearing, and parties would be expected to refer to the bates stamped page number during testimony.

13. If no master record is created, on or before the day of hearing, each party shall provide a complete paper set of their exhibits to the other party and two sets to the Examiner (one for the official record, one for working copies). Note, parties typically also want a copy for their witnesses.
14. On or before the day of hearing, each party shall email a Word version (not .pdf) of their complete exhibit list (including any in addenda) to the Office of the Hearing Examiner at the email address below.
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. Should either party desire/need to amend the schedule as issued herein, the attorneys are encouraged to attempt to submit stipulated schedule revisions.
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 December 5, 2018.

By:



Sharon A. Rice
Redmond Hearing Examiner