

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

In the Matter of the Appeal of))) Abby Road Homeowners Association,) Neil Barnett, Manaji Sukuzi, John Stilin,) and Sherry Stilin)) Of the July 26, 2018 Determination of) Non-Significance (SEPA-2018-00640) for) Emerald Heights Assisted/Independent Living) (LAND-2018-00586/LAND-2018-00617) proposed at 10901 -176th Circle NE, Redmond)	No. APL LAND-2018-00920 ORDER FOLLOWING INITIAL PRE-HEARING CONFERENCE
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First Pre-Hearing Conference

On September 5, 2018, a pre-hearing conference was convened by telephone in the above-captioned SEPA appeal of the determination of non-significance issued in review of the application by Julie Lawton for conditional use permit (CUP) and site plan entitlement (SPE) for the project known as Emerald Heights Assisted Living and Independent Living Building, proposed at 10901 - 176th Circle NE in Redmond. The appeal was timely filed on August 22, 2018 by Claudia Newman and Jacob Brooks of Bricklin Newman on behalf of Abby Road Homeowners Association, Neil Barnett, Manaji Sukuzi, John Stilin, and Sherry Stilin (Appellants).

On the call, all three parties were represented by counsel. Claudia Newman represented the Appellants, the Applicant was represented by Rich Hill, and the City was represented by Jim Haney. Ben Sticka and Steven Fischer of the City of Redmond Planning and Community Development Department were on the call to help guide the scheduling conversation, as was the Hearing Examiner Clerk Cheryl Xanthos.

Pursuant to Redmond Zoning Code (RZC) 21.70.190.E, the instant SEPA appeal must be consolidated with the open record hearing on the underlying action for which the substantive or procedural SEPA determination was made. The SPE is a Type II administrative decision decided by the City of Redmond Technical Committee, while the CUP is a Type III decision in which the Technical Committee makes a recommendation and the final decision is made by the City's hearing examiner. Mr. Sticka indicated that the Technical Committee decision on the SPE and its recommendation on the CUP would be issued by approximately the third week of October. Because the outcomes of those two applications are not yet known, and it is possible that the SPE will be approved and appealed in an uncertain future timeline, the parties agreed to convene a second pre-hearing conference.

Nature of the Proceedings and Public Participation

During the call, it was identified that the Appellants may appeal the approval of the SPE, to be decided administratively by the City of Redmond Technical Committee. Should that permit be granted and appealed, that second appeal would also be consolidated into a single combined open record hearing. The result of the hearing will be a single decision document addressing all matters.

At hearing, the appeal(s) will be heard first, to be directly followed by the open record permit application hearing. Ms. Newman indicated she believed arguments on the SEPA appeal might take more than one full day, and it is possible there will be a second appeal.

Although the entire hearing is open to public observation, only the permit hearing portion of the proceedings allows public comment. Comment is usually taken towards the end of permit hearings. There would be only one public comment period, and given that Mr. Sticka confirmed the parties of record presently number over 330 individuals, it is likely there will be a three minute time limit implemented during the comment period.

Because the appeal(s) would be heard first, it is not possible to know when the public comment period would be if heard at the end of the permit hearing. In such circumstances, it is common for many members of the public to arrive at the hearing intending to testify but then leave prior to the public comment period due to the length and indefinite nature of the wait. In order to facilitate the opportunity for members of the public to be fully heard, it is typical to take public comment out of order at a specific advertised time on the hearing date. This is intended as a benefit to the members of the public. Permit application hearings are typically held in the evening in order to facilitate the ability of the public to participate. During the first pre-hearing conference, it was discussed that the public comment period could potentially be advertised for 5:00 or 6:00 pm, to be taken out of order, on the first hearing date. During discussion of this question in the pre-hearing conference, Ms. Newman indicated she preferred that public comment be taken at the end of the permit hearing instead. The timing of public comment will be addressed again at the second pre-hearing conference.

Second Pre-Hearing Conference

Anticipating that any subsequent appeal would be filed by the approximately November 10th and the matters to be heard will then be identified sufficiently, the parties agreed to reconvene the pre-hearing conference at 1 pm on November 15, 2018.

At that conference, the business to be conducted will be:

- Confirmation of parties and representation
- Clarification of the errors alleged in the appeal(s)
- A discussion of whether dispositive motions are anticipated by any party to address scope
- Clarification of anticipated order of proceedings (first draft below), including timing of public comment and length of hearing days
- Scheduling of:
 - Dispositive motions

- Responses
- Replies
- Ruling
- Witness/Exhibit list exchange
- Exchange of exhibits themselves and pre-hearing briefing
- Scheduling the hearing dates
- Any other procedural matters of concern to the parties

Because the parties were all present, the parties attempted to identify hearing dates. Initially December dates of 12/3/18 and 12/10/18 were discussed. However, because it is unlikely that December hearing dates would be manageable based on third week of October Technical Committee decision/ recommendation issuance, the parties all agreed to, and the Hearing Clerk reserved Council Chambers for, January hearing dates of 1/7/19 and 1/14/19. [As an additional note: If there are unanticipated delays or pre-hearing business extends beyond the third week of October, hearing dates in February that work for the undersigned are 2/4/19 and 2/11/19.]

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.
- Appellant 's case, including witness testimony and introduction of exhibits for both appeals. Counsel will specifically guide questioning/testimony to explicitly address the various issues of each appeal. All Appellant witnesses will be subject to cross examination by the City and the Applicant.
- The City will then present witnesses and exhibits, with cross examination by the Appellant and the Applicant. Again, Counsel will specifically guide witness questioning/testimony to explicitly address the various issues of each appeal.
- The Applicant will then present witnesses and exhibits, with cross examination by the Appellant and the City, with the same guidance to ensure the issues of both appeals are addressed explicitly.
- Please note: cross examination will be restricted to questions about the witness's testimony or documents offered by the witness.
- Rebuttal evidence would be allowed in the same order.
- Due to the complexity and anticipated length of the proceedings, the parties will be invited to make brief closing statements (five minutes or less); however, closing legal argument will be requested in writing.
- 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.

- The appeal(s) will be followed directly by the Conditional Use Permit application hearing consisting of:
- City's presentation
- Applicant's presentation
- Public comment will occur either at an advertised specific time or at the conclusion of the Applicant's permit application presentation
- Responses to public comment from the City and the Applicant may be offered verbally on the record or may be done in writing pursuant to a post-hearing schedule announced on the record.
- Conclusion of the hearing - housekeeping, confirmation of post-hearing schedule
- Note: During the permit portion of the proceedings, Appellants are not parties and have the same standing to participate as any other member of the public.

ORDER

1. A second pre-hearing conference is scheduled for November 15, 2018 at 1:00 pm.
2. The Hearing Clerk and all parties shall reserve 1/7/19 and 1/14/19 in their calendars for these proceedings, and should communicate these dates to important witnesses so they may also reserve them.
3. 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 such urgent communications.
4. All communications and submittals in these pre-hearing proceedings shall be sent via email to the following persons and email addresses:

Examiner:

Attention Cheryl Xanthos, Hearing Examiner Clerk
cdxanthos@redmond.gov

Appellant:

Claudia Newman, Bricklin & Newman LLP
newman@bnd-law.com

City:

Jim Haney, City Attorney, Ogden Murphy Wallace PLLC
jhaney@omwlaw.com

Applicant:

Richard Hill, McCullough Hill Leary PS
Rich@mhseattle.com

Any party requesting that additional persons be added to the email distribution list (e.g, non-attorney party representatives or administrative assistants) shall circulate an email to the list above with the additional name(s) and email address(es).

5. Clarifying questions about this order and any other procedural questions may be directed to the Examiner via email to the same contact information above. Again, all parties should be cc'd on such procedural communications. However, bear in mind that there is another pre-hearing conference scheduled; discussions that are not time sensitive should be reserved for that date.

Ordered September 5, 2018.

By:



Sharon A. Rice
City of Redmond Hearing Examiner