

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

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

**Second Pre-Hearing Conference**

On November 15, 2018, a pre-hearing conference call was convened in the above-captioned SEPA appeal of the determination of non-significance (DNS) 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 second call, all three parties were represented by counsel. Claudia Newman represented the Abbey Road Homeowners Association and all four named Appellants. The Applicant was represented by Rich Hill; Julie Lawton, Lisa Hardy, Kay Wallin, and Grant Linacre of Emerald Heights were on the call. The City was represented by Jim Haney and Kate Hambley. Ben Sticka, Planner, and Hearing Examiner Clerk Cheryl Xanthos were on the call. The following procedural issues and scheduling were discussed and/or agreed to during the call.

**Clarification of Procedural Posture**

At the time of the first pre-hearing conference (September 5, 2018), it was thought that the requested SPE would be decided administratively by the City of Redmond Technical Committee. Appellants indicated that if it were approved, they would likely appeal. Part of the reason for convening this second conference was to allow that process to unfold, because both appeals would be required to be consolidated and heard together with the CUP permit application pursuant to Redmond Zoning Code (RZC) 21.70.190.E. In the interim between the two calls, the Applicant requested that the SPE be consolidated with the CUP, both to be decided by the Hearing Examiner, removing the issue of a possible second appeal.

## **Issues on Appeal**

During the second pre-hearing conference, both the Applicant and the City confirmed that the appeal document, submitted August 22, 2018, adequately spells out the alleged errors in the SEPA DNS. No clarification of issues was requested. It was also confirmed that the scope of the SEPA appeal will be limited to the errors alleged in the August 22nd appeal document.

## **Scheduling Concerns**

### *Hearing Dates*

In the first pre-hearing conference, the parties discussed various potential dates for the appeal, including December 3 and 10 and January 7 and 14. In the Order issued after the initial pre-hearing conference, the Examiner indicated availability on February 4 and 11. Before the end of the first call, the parties agreed that the December dates were not likely to allow enough time for pre-hearing document exchange, especially given Applicant's counsel's announced unavailability in October and the Veterans' Day and Thanksgiving holidays. At the conclusion of the first call, the parties were intending to proceed to hearing in January.

Two days prior to the second pre-hearing conference, counsel for Appellants requested to delay start of the hearing until January 14 and to use February 4 as a second hearing day. Ms. Newman indicated two reasons for her request: first, that a primary witness was not available until January 14th and second, that she had a trial in December that would reduce her time for preparing for the instant proceedings. On the call, counsel for the Applicant objected to this request as untimely and also argued that delaying start of the hearing until January 14th would require the parties to be exchanging pre-hearing documents at the end of December during the usual holiday season, during which time counsel for the Applicant had scheduled unavailability.

Given that RZC 21.76.040.D.2 requires a decision on an appeal to be issued within 90 days<sup>1</sup> and that the hearing examiner rules of procedure (at Rule III.F) require the Hearing Examiner and all parties, or their agents, to make every effort at each stage of a proceeding to avoid delay, the request to delay commencement until January 14th was denied.

The decision to begin on January 7th was also based on the fact that prior to the second pre-hearing conference, the parties had discussed scheduling for pre-hearing exchanges assuming a January 7th start date and had agreed among themselves to forego pre-hearing legal briefing unless specifically requested by the Examiner. Also, no party indicated an intention to submit pre-hearing dispositive motions. The parties' agreed pre-hearing schedule was refined and adopted during the call. No pre-hearing legal briefing is requested by the Examiner.

The parties have agreed to reserve three different dates: January 7th, 14th, and 28th. The SEPA appeal portion of the proceedings will take place during the days, between 9:00 am and 5:00 pm. The permit hearing portion of the proceedings would occur in the evenings from 6:00 pm to 10:00 pm, in order to facilitate public participation.

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<sup>1</sup> Ninety days from August 22, 2018 would be November 20, 2018.

### **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.

- SEPA Appeal, Day 1 - January 7, 2019:
  - Appellant 's SEPA case, including witness testimony (except for the expert witness not available until 1/14) and introduction of exhibits. Appellant witnesses will be subject to cross examination by the City and the Applicant.
  - 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.
  - Note: The City and the Applicant may agree to change the order of their presentations.
  - Note: There is no public comment period during the SEPA appeal hearing. Only persons called as witnesses by the parties will be allowed to testify, and all will be subject to cross examination.
  - The SEPA appeal will break at 5:00 or when the testimony for the day is complete, whichever is earlier.
- Permit Hearing Day 1 - January 7, 2019:
  - On the first evening, the City and the Applicant would make their presentations on the CUP and SPE permits. It is expected that their presentations would take a combined time of approximately two hours; however no limit is established.
  - The public comment portion of the permit hearing will open at the conclusion of the Applicant's CUP/SPE presentation on the first evening.
  - A time limit of five minutes per person will be used. As there are more than 330 individual parties of record, public comment will continue into the second evening.
  - The Permit Hearing will conclude at 10:00 pm on Day 1.
- SEPA Appeal hearing, Day 2 - January 14, 2019:
  - The Appellant's expert witness not available on January 7th will testify and be subject to cross examination.
  - The SEPA appeal would continue, if not otherwise completed on Day 1.
  - At the conclusion of the three cases in chief, rebuttal evidence would be allowed in the same order as the first round.
  - 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 is requested in writing.

- The SEPA appeal will conclude at 5:00 pm or when testimony is complete. If SEPA appeal testimony is not complete, the appeal will reconvene on a third hearing date; however, it is anticipated that testimony will complete on Day 2.
- Permit Hearing Day 2 - January 14, 2019:
  - Public comment will resume at 6:00 pm and go until 10:00 pm or until all present have testified. If not everyone present who wishes to provide public comment has had a chance to testify, the permit hearing will reconvene on a third hearing date.
  - The third hearing date for the both the SEPA appeal and the permit hearing will be January 28, 2019. The time at which the proceedings will reconvene will be announced at the end of each segment of Day 2 proceedings.
  - Responses to public comment from the City and the Applicant may be offered verbally on the record and/or may be done in writing pursuant to a post-hearing schedule announced on the record.
- Hearing Day 3 - January 28, 2019:
  - If either the SEPA Appeal or the Permit Hearing requires a third date, the proceedings will reconvene on January 28, 2019.
- Other Information:
  - Note: During the Permit Hearing, Appellants and Appellant witnesses are not "parties" and have the same standing to participate as any other member of the public.
  - At the conclusion of the hearing, a post-hearing schedule will be established for legal briefing in the SEPA appeal and for written responses to public comment from the Applicant and City in the Permit Hearing.
  - The result of the hearing will be a single decision document addressing all matters. The decision issuance date will be announced at the end of the proceedings.
  - The decision will be mailed to parties of record for whom the City has mailing addresses and will be posted online.

## **ORDER**

### *Hearing*

1. The SEPA Appeal hearing in this matter is scheduled to begin at **9:00 am on January 7, 2019** in the Redmond City Council Chambers. Lunch and other with breaks will be taken as appropriate.
2. The conditional use permit and site plan entitlement permit application hearing will begin at **6:00 pm on January 7, 2019** and testimony will halt at 10:00 pm.
3. Both the SEPA Appeal and Permit Hearings will reconvene at the **same start times on January 14, 2019**, and if all testimony is not completed, either or both matters will reconvene for a third and final date on **January 28, 2019 at the same times**.

4. The entire hearing is open to observation by members of the public; however, there is no public comment on the SEPA appeal.
5. Members of the public who wish to comment on the CUP and SPE applications are encouraged to attend January 7, 2019 in order to hear City and Applicant presentations on the permits. It is anticipated that public comment will commence that evening. Each person will have a time limit of five minutes for their testimony.
6. Public comment on the permit application hearings will reopen at 6:00 pm on January 14, 2019. If at 10:00 pm not all persons present have been able to testify, the open record public hearing on the permit applications will reconvene on January 28, 2019.
7. Similarly, if the SEPA appeal does not conclude on Day 2, it will reconvene at 9:00 am on January 28, 2019.

#### *Dispositive Motions*

8. No pre-hearing dispositive motions were scheduled.

#### *Pre-Hearing Document Exchange*

9. In order to facilitate preparation for all parties, and in order to avoid duplication of exhibits among the parties, on its own motion, the City will prepare and distribute a list of "core documents" associated with its review of the CUP and SPE applications and SEPA review. These core documents will be offered as exhibits by the City and need not be duplicated by the other parties. The **City** will distribute its core documents list by **November 26, 2018**.
10. The **Appellants** shall have until **December 7, 2018** to distribute witness and exhibit lists and exhibits (including expert witness credentials if any).
11. The **Applicant** and the **City** shall have until **December 14, 2018** to distribute witness and exhibit lists and exhibits (including expert witness credentials if any). The City's exhibits shall include the Staff report on both the SEPA appeal and the permit applications. City Staff may prepare and present one combined staff report on both the SEPA appeal and the permit applications or may prepare and provide two staff reports. The staff report(s) shall be included in the City's numbered exhibits in the exhibit list.
12. The **Appellants** may have until **December 21, 2018** to submit rebuttal witness and exhibit lists and exhibits (including expert witness credentials if any).
13. **All parties** shall distribute final witness and exhibit lists not later than **January 3, 2019**. [This is for the purpose of affording advance notice to the other parties and the examiner of any previously offered documents that are no longer intended to be offered, intended to provide the practical result of printing fewer unneeded pages.]

14. For the purpose of meeting the deadlines identified in items 8 through 12 above, all documents shall be exchanged electronically.
15. Per the agreement of all parties during the second pre-hearing conference, each party shall print and prepare its own copies of the other parties' exhibits for use at and after the hearing.
16. **On the day of the hearing, each party shall provide to the Hearing Examiner one complete copy of its own exhibits offered at hearing for working copies.** (The Clerk's Office shall retain the electronic copies of each exhibit as offered and no longer requires a hard copy for the City's Official Record.)
17. Post-Hearing legal briefing is requested to address the SEPA appeal, to include closing arguments. The due date of these briefs will be set on the record at the conclusion of the hearing.

*Submittals* – Please note the following requirements:

18. **Witness lists** shall specify:
  - Name and relationship to appeal (appellant, neighbor, expert, etc.)
  - If offered as expert, a brief statement of credentials (Transportation Engineer, Wetland Biologist, etc)<sup>2</sup>
  - A concise statement of the content of anticipated testimony (Addressing traffic and parking, etc)
19. **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
20. **Exhibit and witness lists shall be prepared as Word documents, no tables or columns, simply numbered 1 through X.**<sup>3</sup>
21. The August 22, 2018 appeal shall be included in the Appellants' exhibits. The DNS and Technical Committee recommendations on the CUP and SPE shall be included in the City's exhibits.

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<sup>2</sup> Note: These instructions relating to witness and exhibit list exchange are generic and used in all pre-hearing scheduling orders. It is not required or expected that all parties would have expert witnesses or would bring representatives from the professions listed as examples.

<sup>3</sup> In the decision document each party will be assigned a prefix - A for Appellant Abbey Road HOA et al, C for City, and E for Applicant Emerald Heights.

22. Please do not include repetitive documents in the exhibits. If two parties disclose the same document as an exhibit, they are requested to confer and determine which one shall offer a given exhibit. The final exhibit lists shall be disclosed on January 3, 2019.
23. 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.
24. To be considered timely, submittals shall be sent via email not later than 3:00 pm on the due date identified.
25. If the exhibits offered amount to a large number of pages, the City Clerk's Office may undertake to establish a master record. If the Clerk chooses to do so, she will notify all parties as early as possible. If a master record is created, the parties are asked to be prepared to refer to exhibits both by exhibit number and by master record page number both in testimony and in briefing.
26. All email submittals shall be emailed to the other parties and to the Office of the Hearing Examiner at the email addresses below. The Hearing Examiner Clerk will forward all submittals to the Examiner.

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

Kate Hambley, Assistant City Attorney, Ogden Murphy Wallace PLLC  
khambley@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).

27. 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, the appeal 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.
28. 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.
29. 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** November 19, 2018.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner