



**CITY OF REDMOND
HEARING EXAMINER
MINUTES**

August 7, 2013

Redmond City Council Chambers
15670 NE 85th Street, Redmond
1 p.m.

Hearing Examiner

Sharon Rice, Offices of Sharon Rice,
Hearing Examiner, PLLC

Staff

Steven Fischer, Principal Planner
David Sowers, Redmond Police Officer
Angela Belbeck, City Attorney's Office
Elizabeth M. Smoot, CMC, Deputy City Clerk

Convened: 1 p.m.

Adjourned: 4:20 p.m.

I. CALL TO ORDER

Hearing Examiner Sharon Rice convened the hearing at 1 p.m.

II. DESCRIPTION OF HEARING SEQUENCE AND PROCEDURES

Ms. Rice introduced the matter under consideration, reviewed the sequence of the hearing for the afternoon, and explained the proceedings. Ms. Rice noted that she will issue a decision on Tent City Appeal within 10 business days of the closing of the record.

Ms. Rice administered the swearing in of all those in attendance testifying on these matters, reminded the attendees that the proceedings were being recorded, and asked them to identify themselves for the record. The following parties to the Appeal were in attendance:

Steven Fischer, Principal Planner, City of Redmond
David Sowers, Police Officer, City of Redmond
Angela Belbeck, City Attorney's Office, City of Redmond
Todd Puckett, Redwood Family Church, Applicant/Property Owner
Scott Morrow, Share/Wheel, Applicant
Gavin West, Attorney Representative, Share/Wheel, Applicant
John Baumann, Appellant

III. APPEAL HEARING

A. TENT CITY APPEAL

File No. LAND-2013-01289

Request: Appeal of a Type I Departmental Director Decision regarding: Tent City Temporary Use Permit, LAND-2013-00929

Location: 11500 Red-Wood Road NE, Redmond

Ms. Rice introduced the matter and addressed pre-hearing motions; providing a brief background of the matter to date:

- Appeal Hearing Notice issued 07/24/13; no pre-hearing conference was set;
- Pre-Hearing Order issued 07/24/13;
- Motion to Seeking Clarification on Issues submitted 07/27/13, by the Applicant's Representative;
- second Pre-Hearing Order issued 07/29/13;
- third Pre-Hearing Order issued 08/02/13;
- Motion for Dismissal submitted 08/02/13, by the Applicant's Representative; and
- Motion in Limine to Exclude Evidence submitted on 08/06/13, by the Applicant's Representative.

Ms. Rice heard testimony from all parties regarding the Motion for Dismissal; and denied the motion. Ms. Rice heard testimony regarding the Motion in Limine to Exclude Evidence; and, after a review of the documents submitted by the Appellant, ruled to allow certain items into the record, identified as follows:

- Exhibit A-1:** Appellant's Prehearing Statement (John Baumann);
- Exhibit A-2:** 09/30/2004 City of Bothell Memorandum, Police Department, re: Tent City Final Police Report;
- Exhibit A-3:** Kirkland Reporter Article (world-wide web);
- Exhibit A-4:** Seattle Times Newspaper Article (world-wide web);
- Exhibit A-5:** Tent City – Related Incidents, Mercer Island Police Department, 06/16/2008; and
- Exhibit A-6:** City of Redmond Ordinance No. 2599(AM); Pages from Chablis PRD/PPL Hearing Examiner Decision.

Ms. Rice entered the City's Staff Report into the record as **Exhibit C-1**; noting the following report **Attachments (1-9)**:

1. Application
2. Vicinity Map
3. Notice of Application and Public Meeting
4. Public Meeting
5. Public Comment
6. Notice of Decision
7. Notice of Appeal Hearing
8. Appeal
9. PowerPoint Presentation

Mr. Steven Fischer, Principal Planner provided a brief overview of the matter and decision being appealed: Application for Temporary Use Permit submitted – 05/28/13; Notice of Application issued; Neighborhood Meeting held; Application approved, Notice of Decision issued – 06/27/13; Appeal filed – 07/11/13; Appeal Hearing Notice issued – 07/24/13; and Appeal issues identified – negative impacts to surrounding properties, and project/site drawings incomplete.

APPELLANT TESTIMONY:

Mr. John Baumann, Appellant, presented testimony regarding: inaccuracies of the project site drawings (size; depiction on information distributed to neighbors; undefined area on-site on encampment move-in day); zoning of the Church where the encampment is located (R-4), and the requirement for a Conditional Use Permit for specific uses; construction in the area leaving unsafe pedestrian access along Red-Wood Road; impact of the encampment on the Church site/neighborhood; and impact on the safety of neighborhood residents.

The City questioned Mr. Baumann, and provided rebuttal testimony, addressing neighborhood safety; there is no evidence supporting an increase in crime in Tent City encampment areas.

The Applicant questioned Mr. Baumann, and provided rebuttal testimony, addressing neighborhood safety; noticing to the community/concern of neighbors; whether any property damage has been reported; the drawings provided to the residents; evidence regarding safety on Red-Wood Road; and use of neighbor utilities.

Ms. Sharmin Dominke, witness for the Appellant, provided testimony regarding the Tent City encampment (as resident on the neighboring property) on the following topics: safety, confusion of encampment residents' move-in, infringement on her property, pets in the encampment, use of water on her property by encampment residents, and dumping of beer cans in her garbage by encampment residents. Ms. Dominke responded to questions from the City and Applicant.

CITY TESTIMONY:

Ms. Angela Belbeck, City Attorney's Office, provided the following item, entered into the record as: **Exhibit C-2:** City of Redmond Pre-Hearing Memorandum of Law.

Mr. Fischer provided the following items, entered into the record as: **Exhibit C-3:** City Staff PowerPoint Presentation (Appeal Hearing, 08/07/2013); and **Exhibit C-4:** Redmond Police Calls 2013 to Tent City (Redwood Family Church and St. Jude's Catholic Church locations).

Mr. Fischer reported on the Short Term Temporary Use Permit for SAHRE/WHEEL Tent City at Redwood Family Church:

- Vicinity Map (located at the corner of NE 116th Street and Red-Wood Road);
- Vicinity Map (outlining the Church property, and Appellant's Properties);
- Procedural Summary:
 - Completeness: 05/28/13 – letter of completeness issued; vested date;
 - Notice of Application: 06/03/13 – comment period begins; and 06/21/13 – comment period ends;
 - Neighborhood Meeting: 06/24/13;

- Notice of Decision: 06/27/13;
- Appeal Deadline: 07/11/13; and
- Notice of Appeal Hearing: 07/24/13.
- Appeal Issue No. 1:
 - It has a negative impact on the adjacent properties that belong to me and my family.
 - Expanded on 08/05/13 to include:
 - increased crime;
 - no oversight by SHARE/WHEEL, trespass, fence installed in wrong location;
 - Church should be required to have a conditional use permit to be allowed in a residential neighborhood, Tent City is an additional use;
 - Plans submitted do not accurately show the area of the encampment; and
 - NE 116th Street and Red-Wood Road not safe to walk on.
- Appeal Issue No. 2:
 - The plans and drawings are incomplete and do not show the true size and location of the tent city; they are very deceptive.
- Appellant's Requests:
 - If the plans were to scale and complete it would be clear to the City that the tent city should not be allowed. It also would have allowed the neighbors to see true impact.
- City's Response:
 - Redmond has not experienced an increase in criminal activity associated with Tent City.
 - Placement of the perimeter fence caused no harm to the adjoining property. Fence was relocated according to approved site plan.
 - The Redmond Zoning Code regulates churches by the size of the congregations (seats). A temporary use associated with a church does not change its classification.
 - In 1977 the City of Redmond approved a Conditional Use Permit for the Church of the Nazarene (today, Redwood Family Church).
 - The Notice of Application and Public Meeting contained two maps: a Vicinity Map; and a Site Map.
 - The intent of the Vicinity Map is to give a general location and provide the viewer context to adjacent properties and streets. The map uses an oval shape to denote the general area.
 - Public Meeting presentation contained additional maps of the proposal.
 - The appellant makes reference to "safe walking routes" as required by RCW 58.17.110. This is a requirement of plats, not temporary use permits.
- Recommendation: Staff recommends the appeal be denied:
 - Project complies with City's code requirements for Temporary Use and Encampments.
 - The appellant has failed to show that the City erred in applying the decision criteria for the approval of the short term temporary use permit.
 - No evidence of increase in crime in Redmond related with Tent City.
 - No harm was caused by the placement of the perimeter fence.
 - A temporary use does not change the RZC classification for a church.
 - Notice and maps gave clear information to the public.
 - RCW "safe walking street" requirements are not applicable to temporary use permits.
 - Appellant has failed to state a specific requested relief.

Mr. Fischer offered the following documents into the record, and provided supporting testimony:
Exhibit C-5: Aerial view (GIS photo) of general project location (with measurement);
Exhibit C-6: Redmond Zoning Code (RZC) Table 21.08.060C; RZC 21.08.280 with comments added by S. Fischer;
Exhibit C-7: Temporary Use Permit Application, Share/Wheel/Redwood Family Church; and
Exhibit C-8: Resolution No. 428; re Conditional Use Permit.

Mr. Fischer provided responses to Appellant queries regarding: conditional use permit uses, safe walking requirements, and tent city policies.

Police Officer David Sowers, witness for the City, provided testimony regarding Exhibit C-4, responses to neighborhood calls, and crime in the area of the encampment. Officer Sowers responded to questions from the Appellant.

APPLICANT TESTIMONY:

Mr. Gavin West, Applicant Representative, presented the Applicant's case, providing the following witnesses:

Mr. Robert Bowen, witness for the Applicant, provided testimony regarding living at the Tent City encampment (including security, litter, rapport with Police, fencing, application requirements, outreach to homeless).

Pastor Todd Puckett, Applicant/Property Owner, provide testimony regarding the encampment, and impacts on the Church congregation and community.

Ms. Scott Morrow, Applicant, provided testimony regarding the encampment, the application process, and SHARE/WHEEL. Mr. Morrow responded to questions from the Appellant.

CONCLUSION:

The City, Applicant, and Appellant offered closing statements.

Ms. Rice called for any further comments. Hearing none, Ms. Rice stated that the record would be closed August 30, 2013, per the terms of a Post-Hearing Order, issued August 8, 2013; and a written decision would be issued in no later than 10 business days. Post-Hearing Order terms are as follows:

1. By Wednesday August 14, 2013, the Applicant may submit a legal brief in response to the City's pre-hearing brief.
2. By Wednesday August 21, 2013, the Applicant may submit additional evidence responding to those of Appellant's exhibits that were admitted in the record identified as Exhibits A1 through A5. The Applicant's submittal may be in the form of written memoranda and/or documents generated by credible sources that support Applicant's position in response to the Appellant's assertions based on the admitted exhibits.

3. The Appellant argued at hearing, in part, that a conditional use permit should have been required to expand the church use to include a temporary encampment. At hearing the City submitted evidence that a conditional use permit was issued in 1977 for the church that is hosting the temporary encampment. This evidence was not known to any party at the time the appeal was filed. The Appellant requested the opportunity to review and respond to the City's evidence.
4. The Appellant and the City shall have until Friday August 30, 2013, to reply to Applicant's post-hearing submittals. On the same date, the Appellant may also submit a written response to the City's evidence that a conditional use permit was previously issued for the church.
5. All submittals in response to this order and the order itself will be included in the record of this matter. No other submittals will be admitted in the record.
6. All submittals pursuant to this order shall be distributed via email to the other parties and to the Office of the Hearing Examiner, Attention Ms. Liz. Smoot, Deputy City Clerk, at emsmoot@redmond.gov.
7. Clarifying questions about this Order or other procedural questions may be forwarded by email to the Hearing Examiner via the Office of the Hearing Examiner. Please carbon copy contact persons for all other parties.

IV. ADJOURNMENT

The appeal hearing closed at 4:20 p.m., and the meeting adjourned.