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

5 In the Matter of the Appeal of
6 **Andorra Ventures LLC**
7 Of Building Permit BLDG-2020-01804.
8

BLDG-2020-01804

**DECLARATION OF DEAN
WILLIAMS IN SUPPORT OF
OMNIBUS RESPONSE**

9 I, Dean Williams, am a citizen of the United States, resident of the State of
10 Washington, and declare and state under the penalty of perjury under the laws of the State
11 of Washington, as follows:

12 1. Andorra Ventures, LLC submitted Public Records Request W017266-04120 to
13 the City of Redmond on April 21, 2020. The City responded with records on June 18, 2020,
14 and Andorra provided these records to myself. After reviewing the public records obtained by
15 Andorra Ventures, LLC, I could not find any reference to an approved change of use for
16 7829 Leary Way NW.

17 2. Included in the Omnibus Response is a true and correct copy of a picture of
18 7829 Leary Way NW, Redmond WA, obtained from King County Parcel Viewer's 2019 aerial
19 mapping software. Aside from cropping the image's edges, the dimensions of this image have
20 not been altered in any way.

21 3. Attached hereto as Exhibit A is a true and correct copy of the Hearing
22 Examiner's *Ruling On Motions From Each Party*, in the appeal of Permits BLDG-2016-
23 09802/BPLN2016-02092.

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4. Attached hereto as Exhibit B is a true and correct copy of an excerpt from the Statement of Appeal for the Appeal of Origins Cannabis Type I Permit – BLDG-2016-09802 and BPLN-2016-02092.

5. Included in the Omnibus Response is a true and correct copy of a picture of 7829 Leary Way NW, Redmond WA and Redmond’s Downtown Park, obtained from King County Parcel Viewer’s 2019 aerial mapping software and using the built-in measurement tool. Aside from cropping the image’s edges, the dimensions of this image have not been altered in any way.

DATED this 2nd day of July, 2020, in Bellevue, WA.

Dean Williams

Dean Williams

156-001 Declaration of Dean Williams iso Omnibus Response 07-02-20F

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DECLARATION OF SERVICE

I, Dean Williams, am a citizen of the United States, resident of the State of Washington, and declare under the penalty of perjury under the laws of the State of Washington, that on this date, I caused to be served via email, a true and correct copy of the foregoing Declaration of Dean Williams in Support of Omnibus Response, upon The Office of the Hearing Examiner and all counsel and parties of record as stated below.

Office of the Hearing Examiner
To: Kalli Biegel, Deputy City Clerk
PO Box 97010 – M/S 3NFN
Redmond, WA 98073-9710

kbiegel@redmond.gov

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Dated this 2nd day of July , 2020, in Bellevue, Washington.

Dean Williams

DEAN WILLIAMS

EXHIBIT A

BEFORE THE HEARING EXAMINER
FOR CITY OF REDMOND

In the Matter of the Appeal of)	NO. APP_____
)	
)	
WPDC Cleveland LLC)	Origins Appeal
)	
)	
of approved Permits)	
BLDG-2016-09802/BPLN2016-02092)	RULING ON MOTIONS
Authorizing Tenant Improvements and)	FROM EACH PARTY
Change of Occupancy for the structure at)	
16390 Cleveland Street, Redmond)	
<u>Issued February 17, 2017</u>)	

Consistent with previous pre-hearing orders issued March 17, 2017 and April 21, 2017, the Appellant and the Applicant in the above captioned appeal submitted dispositive motions.

On May 1, 2017 Appellant submitted a motion for summary judgment, alleging that there are no disputed material facts and requesting the appeal be disposed of as a matter of law. The relief requested was to have the building and change of occupancy permits rescinded and a stop work order issued to prevent any further alterations to the building pending resolution of the appeal.

The Applicant submitted a May 1, 2017 motion to dismiss appeal issues 1, 2, 3, 4, 5, 6, 8, 9, and 13 (of 13) arguing generally that the issues alleged are outside the scope of the jurisdiction of the undersigned on the grounds that a) the previously submitted site plan entitlement application has been rescinded/is not pending and the appeal is limited in scope to the approvals issued and b) disputing that a potential recreational retail marijuana use is at issue. The Applicant also contended that the undersigned lacks authority to issue a stop work order.

Each party responded to the other's motion, essentially offering their own motion's arguments in response to the other party's motion.

The City responded in a single response to both motions arguing (among other items) that the undersigned lacks authority to issue a stop work order and disputing that one is appropriate, and also contending that the undersigned lacks authority to dispose of appeal issues through a summary judgment pre-hearing process where there are questions of material fact. The City supported the Applicant's motion to dismiss.

The City's response included a motion for a stay of the proceedings. The stay was requested because on May 3, 2017 (after the dispositive motions were due and submitted), the Applicant submitted a revised building permit application, changing details of the building permit appealed


from. The City's brief and the attached declaration of Jozanne Moe indicated that the City anticipated approving the building permit revision request, rendering an appeal of the previous building permit moot.

ORDER

1. Appellant's motion for summary judgment is denied in its entirety. There are material facts in dispute. Regarding the request for issuance of a stop work order, Appellant failed to cite to any authority granting the City's hearing examiner that power. The undersigned is not persuaded that the City's land use hearing process is the proper forum for such a motion.
2. Applicant's motion to dismiss various appeal issues is denied in its entirety; its characterization of appeal issues as having been disposed of through withdrawal of the site plan entitlement application is not persuasive. Given the evidence submitted with Appellant's motion and response and the City's declaration of Jozanne Moe, it is not possible to untangle the issue of whether a recreational marijuana retail use is proposed, and proper procedures have been followed for such a use, without the benefit of testimony subject to cross examination.
3. The City's request for stay of the scheduled appeal proceedings (with pre-hearing document exchange to begin May 17th and the hearing set for May 31, 2017) is granted. The pre-hearing document exchange schedule is suspended until further notice.
4. The May 31, 2017 1:00 pm hearing date and time are not stricken at this time. The parties are instructed to maintain their availability for that date in the unlikely event that the hearing is able to go forward due to a quick denial of the revision request, or for further pre-hearing conference.
5. The City shall notify the undersigned as soon as possible when a decision on the requested building permit revision is issued. If no decision has yet been issued by May 23, 2017, the City shall submit a status report on the building permit revision application via the Hearing Examiner Clerk Cheryl Xanthos by email to cdxanthos@redmond.gov. This report should include a new estimate of time remaining on the process. Ms. Xanthos will circulate the information to the parties and the examiner.
6. A future order will be issued not later than May 24, 2017 addressing the May 31st hearing date/time.

Ordered May 15, 2017.

By:



Sharon A. Rice
Redmond Hearing Examiner

EXHIBIT B



March 2, 2017

Aaron M. Laing
Admitted in Washington
T: 206-407-1553
alaing@schwabe.com

BY HAND DELIVERY

City Hall, 2nd Floor
Customer Service Center
c/o Office of the Hearing Examiner/City
Clerk
15670 NE 85th Street
Redmond, WA 98073

RE: Appeal of Origins Cannabis Type I Permit -- BLDG-2016-09802 and BPLN-2016-02092

Dear Hearing Examiner:

Pursuant to Redmond Zoning Code (RZC) Chapter 21.76, we write on behalf of WPDC Cleveland LLC ("WP") and hereby appeal the City of Redmond's February 17, 2017 Type I administrative decision to issue building permit number BLDG-2016-09802 and all related ancillary approvals, including without limitation the change of occupancy permit under City sub-plan number BPLN-2016-02092 (collectively, the "Decision"), for the Origins Cannabis project to be located at 16390 Cleveland Street, Redmond, WA 98052, King County tax parcel number 719880-0085 (the "Project Site"). For reference, a true and correct copy of a February 27, 2017 screen shot of the City's online permit E-Track Portal for the Decision is provided as **Attachment 1** hereto.

Along with the City's standard Type I appeal form and appeal fee, per RZC 21.76.060.I.2., appellant WP provides the following information:

Standing / Right to Appeal & Background Facts

WP owns the adjacent abutting parcel to the Project Site, which parcel is located at 16330 Cleveland Street, Redmond, WA 98052, King County tax parcel number 719880-0086 (the "WP Property"). The WP Property and the Project Site are in the City's Downtown – Old Town ("OT") zone, per RZC 21.10.020 & .030. The WP Property is developed with a retail building and associated surface parking, and it is occupied by the locally-owned Prime Steakhouse restaurant.

The Project Site is occupied by an abandoned warehouse with no existing onsite parking spaces. Although King County records (see **Attachment 2**) state that the present use is "warehouse,"

there is no evidence that the building on the Project Site has been occupied or used for any purpose since at least 2002 and likely earlier.

Per RZC 21.10.030.D. (Table 21.10.030C), “warehouse” use is not a permitted use in the OT zone, and the building and Project Site do not conform to current land use or building code requirements, making both the building and site non-conforming, per the definitions in RZC Chapter 21.78.

On June 18, 2016, City Ordinance No. 2836 became effective and created a new land use, “marijuana retail sales.” “Marijuana retail sales” is a permitted use in the OT zone and is a separate and distinct use from “General Sales or Services,” as shown in both in the OT Allowed Uses and Basic Development Standards ((Table 21.10.030C)) and per RZC Chapter 21.41, Marijuana-Related Uses. Per the building permit application, it also appears that the usable interior space of the abandoned warehouse on the Project Site will be increased from approximately 2,800 square feet to approximately 3,300 square feet—a nearly 20% increase in usable building square footage.

RZC 21.76.020.D.2. states, in part, that “Review and approval of one or more land use permits is generally required for any . . . exterior modification to a building or site, . . . expansion or exterior remodeling of structures. . . . Other actions requiring a land use permit include interior tenant improvements that propose additional square footage” As acknowledged on the face of the application submittals, the project will add square footage and additional permits will be required to address fenestration and ingress / egress requirements as the building does not meet code. RZC 21.76.020.H.4.a. provides: “All land use permits required by the RZC must be obtained *before* any building or construction permit may be issued.” (Emphasis added.) RZC 21.76.020.E. further provides that “RZC Article II, *Design Standards*, shall be required for all applications requiring a building permit for exterior modifications” It appears that the applicant, with assistance from the City, is piecemealing the permit process, possibly with the intent to (and certainly with the result of) avoid(ing) heightened public notice and review requirements.

The proposed change of land use to a marijuana retail sales establishment will generate new and additional vehicular traffic and demand for customer and employee parking, delivery parking and other impacts. Per RZC 21.10.030.D. (Table 21.10.030C), a marijuana retail sales establishment of this size must provide at least two (2.0) and up to five (5.0) parking spaces per one thousand (1,000) square feet of gross floor area, with a minimum of at least seven (7) onsite parking spaces. RZC 21.40.020.D. (Table 21.10.020), short- and long-term bicycle parking spaces are also required. The proposed Origins Cannabis project will have no onsite vehicular or bicycle parking spaces.

As shown in **Attachment 3** (true and correct copies of the City’s marijuana retail site and buffer maps from the City’s website), the Project Site is enveloped by multiple regulatory buffers that preclude siting a marijuana retail establishment on or even near the proposed location. The Project Site is located within 1,000 feet of one or more existing City public parks, playgrounds and/or schools, including but not limited to the City’s Downtown Park playground two blocks

away east along Cleveland Street, the Lake Washington School District headquarters two blocks south of the Project Site and Redmond Elementary School/Old Redmond Schoolhouse campus northeast of the Project Site.

Per **Attachment 3** and on information and belief, the Project Site is also located within 100 feet of one or more existing recreation centers and child care centers, including the Redmond Old Firehouse Teen Center.

Despite being an abutting, neighboring property owner, WP was not provided any notice of the Origins Cannabis project and only learned of it when demolition on the Project Site commenced approximately one week after the Decision issued. On information and belief, the City's failure and/or refusal to provide WP notice of the Origins Cannabis project application prior to issuance of the Decision was done deliberately and/or in bad faith with the intent to deprive WP of the opportunity to review and comment on the application. Regardless of the City's reasons for not providing such notice, WP has been deprived of its due process rights to notice and comment on the application.

In sum, WP is and will be adversely affected by the Decision for the following reasons: lack of notice of the application; the lack of an opportunity to comment; trespass by Origins Cannabis employees, customers, delivery personnel and owners, invitees, and/or licensees on the WP Property and the associated added cost of monitoring and enforcing its property rights; unlawful use of the WP Property's parking spaces by Origins Cannabis employees, customers, delivery personnel and owners, invitees, and/or licensees and the associated added cost of monitoring and enforcing its property rights; and/or interference with WP's and/or the Prime Steakhouse's guests', invitees' and licensees' quiet use and enjoyment of the WP Property by Origins Cannabis employees, customers, delivery personnel and owners, invitees, and/or licensees and the associated added cost of monitoring and enforcing its property rights.

WP is further harmed by the unlawful siting of a retail marijuana establishment on the Project Site, which is located within buffers for schools, parks, playgrounds, child care centers and recreation centers required by state law and City regulations (*see, e.g.*, WAC 314-55-050 and RZC 21.41.040).

Errors of Procedure, Fact and Law

WP incorporates the facts set forth above as if fully-set forth below, for purposes of meeting the factual specificity requirements of the City's code and appeal form. The City's Decision is in error because:

- 1) the City failed to provide WP any notice or opportunity to comment on the Origins Cannabis project prior to issuing the Decision, which violates City notice requirements under RZC 21.76.020, .050, .060, & .080 and as required by RCW 36.70B.110, Washington common law and state and federal constitutional due process clauses;

- 2) the City failed to require compliance with the procedural and substantive requirements of RZC 21.76.020.D.2., RZC 21.76.020.H.4.a., and / or RZC 21.76.020.E. in allowing for the piecemealing of the permit process, allowing for the occupancy of a marijuana retail sale use in a building that does not comply with the building code, and approving a change of use with increased usable floor area on a non-conforming site in a non-conforming structure;
- 3) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.a., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C), because the proposed marijuana retail sales establishment is a change in land use and such change in use requires provision of onsite parking spaces and none is provided;
- 4) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.a.-b., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C), because the proposed marijuana retail sales establishment will result in an enlargement of the leasable floor area and such enlargement requires provision of onsite parking spaces and none is provided;
- 5) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.c., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C), because the proposed marijuana retail sales establishment will result in a change in land use and such change in use requires provision of at least the code minimum number of onsite parking spaces and bicycle parking and none is provided;
- 6) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.c., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C), because the proposed marijuana retail sales establishment will result in an enlargement of the leasable floor area and such enlargement requires provision of at least the code minimum number of onsite parking spaces and bicycle parking and none is provided;
- 7) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.e., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C), because the prior use, warehouse, was abandoned and/or terminated and the proposed marijuana retail sales establishment requires provision of at least the code minimum number of onsite parking spaces and bicycle parking and none is provided;
- 8) the City failed to follow the criteria and requirements of RZC 21.40.010.E.8., Off-Street Loading Space, because the proposed marijuana retail sales establishment requires provision of off-street parking facilities for service vehicles and none is provided;

- 9) the City failed to follow the criteria and requirements of RZC 21.41.040.C.&D. and WAC 314-55.050(10)&(11) (marijuana retail sales establishment buffer requirements), because the approval of a marijuana retail establishment is within the required buffers for one or more parks, playgrounds, schools, recreation centers and/or childcare centers, as detailed above;
- 10) the City failed to follow the criteria and requirements of RZC 21.76.100.F.7. for the alteration and/or expansion of a nonconforming use, because the warehouse use of the building on the Project Site was changed and/or abandoned and/or terminated for at least twelve (12) months, the proposed new use of marijuana retail sales is a change of use, and therefore all rights to any parking nonconformities have been terminated, which requires the new use to provide code-compliant onsite parking and loading spaces;
- 11) the City failed to follow the criteria and requirements of RZC 21.76.100.F.9.a.&b. for the alteration or expansion of a nonconforming structure in conjunction with a change of use as the proposed marijuana retail sales establishment will increase the parking nonconformity as the use requires more onsite parking than a warehouse use and/or the value of the improvements equal or exceed the value of the existing structure, including but not limited to future improvements to be undertaken from the date of the Decision forward for three years;
- 12) the City failed to follow the criteria and requirements of RZC 21.76.090.E., Revocation of Permits, for failing and/or refusing to revoke or otherwise rescind the Decision despite actual knowledge of facts that demonstrate the Decision was issued in error and/or obtained by misrepresentation of material fact, including without limitation the location of the Project Site within the City and state required buffers for marijuana retail sales establishments and/or the prior/existing use of the Project Site; and
- 13) the City failed to follow the criteria and requirements of RZC Chapter 21.76.070.B., Criteria Applicable to All Land Use Permits, because the approval of a marijuana retail establishment is inconsistent with the City's development regulations cited above as well as RZC 21.41.040.C.&D. (buffer requirements) for the change in use from abandoned warehouse to retail marijuana establishment.

Relief Requested

WP respectfully requests that the Hearing Examiner reverse the Decision to approve the Origin Cannabis project and deny the applications for a building permit and change of use.

Other Information

WP reserves the right to amend this appeal, including the City's alleged errors, to conform with

City Hall, 2nd Floor
March 2, 2017
Page 6

additional facts obtained through a request for public records pursuant to RCW Chapter 42.56, the Public Records Act, to be presented to the City upon filing of this appeal. WP reserves the right to introduce additional information through testimony, documents, photographs and other such means as allowed under the adopted City of Redmond Hearing Examiner Rules of Procedure ("ROP"). Per ROP VII.A, we respectfully request a prehearing conference to be held at a mutually agreeable time and date.

By separate communication, we will notify the Washington State Liquor and Cannabis Board of this appeal and request that the Board terminate the Origins Cannabis license.

Thank you for your thoughtful consideration of this matter.

Very truly yours,

SCHWABE, WILLIAMSON & WYATT, P.C.



Aaron M. Laing

AAL:jan
Attachments

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