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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
APPELLANT'S OMNIBUS RESPONSE
TO DISPOSITIVE MOTIONS

9 **I. INTRODUCTION**

10 Relief sought for a government's failure to act according to its own regulations is
11 always elusive. Here, Andorra Ventures, LLC ("Andorra") is appealing the only action that the
12 City of Redmond ("City") did take, issuing BLDG-2020-01804 (the "Permit"), and the Permit
13 must fail as a matter of law because it is premised on a failure to act that makes the Permit non-
14 compliant on its face. The Applicant, Hashtag Cannabis ("Hashtag"), freely admits that the
15 City's existing land use classification of 7829 Leary Way NE, known colloquially as Western
16 Wear, is General Sales or Services. According to Redmond Zoning Code ("RZC") 21.78,
17 General Sales or Services explicitly does not include marijuana retail sales. Because the Permit
18 authorizes the construction of a marijuana retail sales space, the Permit also requires a change
19 of use, necessitating that the issues raised in the Statement of Appeal be addressed by the City
20 and Hashtag. No matter how the issues are stated, the Permit is invalid and must be reversed.

21 **II. STATEMENT OF FACTS**

22 **A. Business License**

23 Hashtag submitted and obtained a Business License from the City to operate a retail
24 marijuana sales establishment at 7829 Leary Way NE. *See Declaration of Logan Bowers*
25 ("Bowers Decl.") at ¶ 4, Ex. A. Hashtag was issued the approved license on May 1, 2020.

1 *See id.* at ¶ 5, Ex. B. In the license application itself, in response to the question “Will you
2 have a change of use occurring on the property?”, Hashtag responded, “Yes.” *See id.* at p.8.
3 In explanation, Hashtag stated, “Space formerly operated by building owners as Western
4 apparel store. Space will now be used by tenants for state-licensed recreational cannabis retail.”
5 *Id.* There can be no dispute that, the “Western apparel store” referenced by Hashtag did not
6 sell marijuana. Clearly, Hashtag and the City knew that a change of use from the sort of retail
7 operated by the previous business was needed to operate a marijuana retail store.

8 According to RZC 21.78, General Sales or Services explicitly “does not
9 include . . . marijuana retail sales.” In fact, “Marijuana retail sales” is defined elsewhere as a
10 separate use under RZC 21.78. These two uses are also separately designated in the
11 Comprehensive Allowed Uses Charts set forth in RZC 21.04.030C. However, in seeming
12 contradiction to these facts, Hashtag freely admits that there has been no change of use, and
13 that, “Its land use classification under the Redmond Zoning Code is General Sales and
14 Services.” *See Hashtag’s Motion for Summary Judgment* (“Hashtag’s MSJ”) at 2. Even after
15 an exhaustive review of the documents provided to Andorra pursuant to its public records
16 request, no change of use authorization could be found to have been provided by any
17 appropriate department official. *See Declaration of Dean Williams* (“Williams Decl.”) at ¶ 1.

18 Hashtag claims that this lapse in logic is factually unimpeachable because the City
19 decided not to require a change in the City’s land use classification of the property when
20 granting the Business License, and Andorra did not appeal the City’s decision to issue the
21 Business License. *See Hashtag’s MSJ* at 3. Hashtag relies on Redmond Municipal Code
22 (“RMC”) 5.04.060(A)(4) for the factual assertion that Hashtag was required to demonstrate
23 compliance with all land use regulations in order to obtain the Business License. *Id.* at 2–3. As
24 detailed in the arguments below, Andorra disputes the veracity of these “facts” and the legal
25 conclusions that Hashtag derives from them for several reasons.

1 **B. Applicable Redmond and International Codes**

2 Hashtag applied for the subject Building Permit in order to construct a new demising
3 wall in the existing building to divide the building into two spaces. *See Bowers Decl.*, Ex. C
4 “Project Description.” According to RZC Table 21.76.050B, a Building Permit follows the
5 Type I decision and review process. The Decision Criteria for a Type I application is provided
6 in RZC 21.76.060D as follows:

7 The decision of the department director shall be based on the criteria for the
8 application set forth in this code, or in the applicable uniform or
9 international code in the case of building and fire-related permits. **The
10 decision shall include any conditions necessary to ensure consistency
11 with the applicable development regulations.**

12 (emphasis added). The RMC incorporates the International Building Code (“IBC”) and the
13 International Existing Building Code (“IEBC”) in Chapter 15.08 RMC, with amendments.
14 While the City and Hashtag claim that the IBC and IEBC are all that matters, these codes
15 acknowledge that the validity of a building permit depends on compliance with other
16 ordinances of the jurisdiction. For example, pursuant to Section 105.4 of the IBC:

17 The issuance or granting of a permit shall not be construed to be a permit
18 for, or an approval of, any violation of any of the provisions of this code or
19 of any other ordinance of the jurisdiction. Permits presuming to give
20 authority to violate or cancel the provisions of this code or other ordinance
21 of the jurisdiction shall not be valid.

22 *See also* IEBC Section 105.4. According to the IBC and IEBC, the issuance of the Permit is
23 invalid because it purports to authorize the construction of a marijuana retail sales
24 establishment within a General Sales or Services use building, which explicitly prohibits
25 marijuana retail sales pursuant to the language adopted by City of Redmond Ordinances 2744
and 2803 under RZC 21.78.

As Hashtag correctly notes, Hashtag only gets to rely on RZC 21.40.010(C)(1)(c),
regarding nonconforming parking, if the existing use of the building continues unchanged. *See*

1 *Hashtag MSJ* at 6. If Hashtag cannot rely on the existing use of the building, then Hashtag
2 must comply with Table RZC 21.10.030B, RZC 20D.130.10-030(6), RZC 21.40.010.E(6),
3 RZC 21.10.030C(8) and 20D.130.10-010(4), pursuant to the terms of the nonconforming
4 parking regulations.

5 Finally, for the same reasons described above, according to the IBC and IEBC, the
6 issued Permit is invalid if the proposed use does not comply with RZC 21.41, regarding
7 marijuana-related uses, where the City specifies the buffer requirements for citing marijuana
8 retail sales, as adopted by various City Ordinances, including but not limited to 2744, 2803
9 and 2836.

10 **C. Hashtag’s Existing Parking Facilities**

11 The assertion that the Hashtag parking lot has eight stalls, allowing customers to back
12 out, turn around, and drive forward out of the parking lot, is dubious at best. *See Hashtag’s*
13 *MSJ* at 3–4. To the right is a picture of this parking lot from King County Aerial Photographs
14 Circa 2019. *See Williams Decl.* at ¶ 2.

15 There are only three cars pictured in the parking lot, but
16 already, it is difficult to understand how eight cars would
17 safely fit. If five more cars showed up, it is difficult to
18 picture how the silver car in the corner would get out at



19 all. If the large gray vehicle pictured was parked in the right-most spot, it would probably
20 hang out into the sidewalk. If the lot was full with eight cars, there would be no room for a car
21 in the bottom left corner to turn around.

22 On the subject of the number of spaces provided, Hashtag’s Permit purports to divide
23 the property into two retail spaces. Obviously two retail spaces will create more traffic than
24 one. Regardless, the RZC requirement for parking spaces is calculated by gross floor area.
25 *See* RZC Table 21.40.030C(8). Based on the following facts, the decision to require only two

1 parking spaces per 1000 sq. ft. of floor area is not supported by the evidence and represents a
2 clearly erroneous decision.

3 According to public information provided at www.502data.com, Hashtag Cannabis had
4 \$340,675 in sales for the month of March 2020.¹ The average retail sale per person at a
5 marijuana retail sales store in King County is \$19.32.² In order to generate that revenue,
6 Hashtag would need to have roughly 17,633 customers in the month of March, averaging 568
7 customers per day. Hashtag Cannabis in Redmond currently advertises its hours of operation
8 as 9AM to 10PM, or 13 hours a day, meaning that it potentially has over 43 customers per hour
9 competing for just three parking spaces.³

10 The obvious discrepancies between the summary judgment arguments by Hashtag
11 purporting to demonstrate its compliance, regardless of the jurisdictional arguments, and the
12 facts presented by Andorra, evidence that there are material facts in dispute sufficient to deny
13 Hashtag's Motion for Summary Judgment on the facts.

14 III. ARGUMENT

15 A. The Hearing Examiner has Jurisdiction to Consider the Issues Raised by 16 Andorra Ventures, LLC.

17 The City and Hashtag seem to rely on the IBC and IEBC as being all about building
18 requirements alone, arguing that the approved Permit is only about building a new wall, and
19 nothing else. However, both of these Codes recognize that a permit is invalid if it fails to
20 comply with other ordinances of the jurisdiction, each in their respective Section 105.4.
21 Therefore, this appeal does concern the application and interpretation of both the IBC and
22 IEBC. According to RZC 21.76.060D.3, the decision of the Director shall include any

23 _____
24 ¹ <https://502data.com/license/414884>.

25 ² <https://502data.com/counties>.

³ These numbers are generalized, as traffic volumes vary by day and hour, but they clearly justify and demonstrate Andorra's concern.

1 conditions necessary to ensure consistency with the applicable development regulations.
2 Andorra is not arguing that the building official must incorporate every land use component
3 into its review, but where such a glaring procedural step has been missed, the building official
4 should have conditioned the approval of the subject Permit on Hashtag obtaining the
5 appropriate change in use and complying with any Code that necessarily come into play.

6 Regardless of the Hearing Examiner’s decision regarding the applicability of the IBC
7 and IEBC discussed above, pursuant to RZC 21.76.060.I.2.b.ii, Andorra is permitted to allege
8 an “error of fact, law, **or procedure.**” (emphasis added). Here Andorra is alleging that the
9 building official and the City failed to follow procedure, skipping entirely the necessity for
10 Hashtag to apply for a change of use, further necessitating the requirement to comply with the
11 stated appeal issues.

12 Andorra anticipates that the City and Hashtag will argue that Andorra did not raise the
13 failure to require a change of use in its Statement of Appeal, but Andorra incorporated this
14 failure in its Issue B, wherein it alleges that there is a change of use, and further, the failure to
15 require the change of use itself is not the cause of Andorra’s adverse impacts. If the City failed
16 to require the change of use but nonetheless required Hashtag to comply with the Codes
17 detailed in the Statement of Appeal, Andorra would not be adversely impacted and would not
18 have standing to challenge the Permit.

19 The City’s position in the Motion to Dismiss amounts to arguing that an applicant *must*
20 be granted a building permit even when the permit itself results in a violation of other
21 provisions of Redmond Code, or when there are pre-existing violations of Code that have not
22 yet been resolved. This seems implausible, and that argument is surprising, since the practice
23 of making permit seekers bring existing violations of any regulation into conformance, before
24 new permits are issued or final approval is given, is ubiquitous across the State of Washington.
25

1 Finally, the Hearing Examiner may recall her reasoning in the attached *Ruling on*
2 *Motions From Each Party*, wherein the Examiner determined that “it is not possible to untangle
3 the issue of whether a recreational marijuana retail use is proposed, and proper procedures have
4 been followed for such a use, without the benefit of testimony subject to cross examination.”
5 *See Williams Decl.* at ¶ 3, Ex. A (Appeal of BLDG-2016-09802/BPLN2016-02092). In that
6 appeal of building permits for a property just down the street at 16390 Cleveland Street, the
7 applicant sought only to make some tenant improvements and to open a marijuana retail sales
8 store. The Appellant argued that the proposed marijuana retail sales establishment evidenced
9 a change of use necessitating updates to the onsite parking. *See Williams Decl.* at ¶ 4, Ex. B.
10 Nearly identical motions and arguments were presented by both sides regarding tenant
11 improvements and change of use, and the Hearing Examiner determined that a hearing was
12 necessary to determine whether proper procedures were followed in the siting of a marijuana
13 retail use.

14 **B. The Failure to Appeal the Business License is not Preclusive of the Issues in the**
15 **Statement of Appeal.**

16 Hashtag appears to argue that Andorra should have raised these issues in an appeal of
17 Hashtag’s business license. *See Hashtag’s MSJ* at 2–3. There is no appeal set out in code for
18 the *approval* of a business license. *See RMC 5.04.150* (providing opportunity for a hearing
19 only when a license is suspended, revoked, or denied). Andorra believed, quite understandably,
20 that the City would require Hashtag to obtain a change of use to construct a marijuana retail
21 sales store in a building designated for a use that prohibits such sales.

22 Further, it would be illogical to require a business license applicant to prove that the
23 license itself complies with the existing designated use of the building because, as evidenced
24 in the approved Permit, there can be more than one type of use within a single building. *See*
25 *Bowers Decl.*, Exhibit C, referencing a future tenant in phase 2.

1 The business license application itself also seems to presume that any required change
2 of use will come at a later date. *See Bowers Decl.* at p.8 (Ex. B). The information regarding
3 change of use is listed under “Building Department Information.” *Id.* It is entirely reasonable
4 that the building official would then address the change of use in a subsequent application,
5 before a certificate of occupancy is issued.

6 **C. There Are Issues of Material Fact Sufficient to Defeat a Motion for Summary**
7 **Judgment.**

8 **1. There has been a change of use that was not formally approved, and the**
9 **proposed use in the Permit violates the existing use.**

10 As explained above, and admitted in Hashtag’s Motion, Hashtag’s reliance on
11 continued use of the nonconforming parking is reliant on the failure to submit change of use.
12 RMC 21.40.010(C)(1)(c) provides that “[w]hen a preexisting building with nonconforming
13 parking is remodeled or rehabilitated but not enlarged, the existing use of the building may
14 continue without providing additional parking.” Whether the subject Permit is a *de facto*
15 change of use authorization is a fact in dispute. Similarly, whether the subject Permit is invalid
16 as provided in the IBC and/or IEBC because the failure to require a change of use resulted in
17 an unpermitted use is a material fact in dispute.

18 **2. The decision to require only the minimum amount of parking is not**
19 **supported by a preponderance of the evidence and is clearly erroneous.**

20 According to Table 21.10.030.C(8), the minimum parking allowed for marijuana retail
21 sales is 2 spaces per 1,000 sq. ft. of gross floor area, and the maximum allows is 5 spaces. Even
22 if the 43 customers per hour that Hashtag can expect to receive were perfectly distributed over
23 each hour and day of the week, and common knowledge tells us they are not, three parking
24 spaces for 43 patrons per hour is simply not enough. There is no evidence to support allowing
25 Hashtag to maintain only three parking spaces for this highly intensive retail use. The decision
to ignore these obvious facts is clearly erroneous. There is a material fact in dispute regarding

1 whether the decision of the building official meets the requirements of providing the minimum
2 necessary parking stalls for a marijuana retail use.

3 **3. When the Hashtag parking lot is full, some vehicles must back into the street**
4 **to exit.**

5 Based on the aerial photograph above, there is a material fact in dispute as to whether
6 the design of the Hashtag parking lot necessitates that vehicles back into the street to exit the
7 lot. Just from the naked eye, it is obvious that, if the Hashtag parking lot were full, even with
8 compact cars, some would not be able to exit without hitting other vehicles, meaning that they
9 cannot exit at all. More importantly, the vehicles parked in the stalls that pull straight forward
10 simply do not have the room to turn around and exit the lot straight onto the street.

11 **4. The City’s allowed use of the site for retail marijuana sales violates the**
12 **buffer requirements under RZC 21.41.040.C.**

13 According to RZC 21.41.040.C, No marijuana retailer shall locate within 1,000 feet,
14 measured in the manner set forth in WAC 314-55-050(10), from . . . [a] playground. According
15 to WAC 314-55-050(10): “The distance shall be measured as the shortest straight line distance
16 from the property line of the proposed building/business location to the property line of the
17 entities listed below: (b) Playground[.]”

18 According to King County Parcel Viewer, 7829 Leary Way NE is far less than the
19 required 1,000 feet from Redmond’s Downtown Park “Splash Pad/Plaza.” Pictured below.



1 *See Williams Decl.* at ¶ 5. There is a material fact in dispute as to whether the Downtown Park
2 Splash Pad/Plaza qualifies as a playground, and whether the siting of this store violates the
3 1,000-foot-buffer-requirement.

4 **IV. REQUEST FOR RELIEF**

5 Appellant, Andorra Ventures, LLC, respectfully requests that the City’s Motion to
6 Dismiss and Hashtag’s Motion for Summary Judgment be denied in their entirety.

7 DATED this 2nd day of July, 2020.

8 JOHNS MONROE MITSUNAGA &
9 KOLOUŠKOVÁ, PLLC

10 By /s/ Dean Williams
11 Dean Williams, WSBA #52901
12 Attorney for Andorra Ventures, LLC

13 *156-001 Appellant's Omnibus Response to Dispositive Motions 7-02-20F*

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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 APPELLANT'S OMNIBUS RESPONSE TO DISPOSITIVE MOTIONS, upon The Office of the Hearing Examiner and all counsel and parties of record as stated below.

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

Dean Williams

DEAN WILLIAMS