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

In the matter of the Appeal of

**Andorra Ventures, LLC**

Of the April 10, 2020 approval of  
BLDG-2020-01804 which authorized tenant  
Improvements to an existing commercial  
Space addressed as  
7829 Leary Way, Suite 100, Redmond

NO. APL LAND - \_\_\_\_\_

**REPLY IN SUPPORT OF MOTION TO  
DISMISS APPEAL**

**I. INTRODUCTION**

The City of Redmond hereby submits this Reply in Support of its Motion to Dismiss filed herein on June 22, 2020. Although Andorra submitted an Omnibus Response to Dispositive Motions that includes responses to both the City’s motion and a motion filed by Plausible Products, this Reply is limited to the City’s motion. For the reasons set forth in the City’s Motion to Dismiss and this Reply, the Hearing Examiner lacks jurisdiction over the issues raised by Andorra in this appeal and the appeal must be dismissed.

**II. REPLY ARGUMENT**

RMC 15.08.050(6) and RMC 15.08.055(2) dictate dismissal of Andorra’s appeal for lack of subject matter jurisdiction. RMC 15.08.050(6) amends Section 113 of the 2015 International

1 Building Code (IBC) to set forth the grounds on which the appeal of a building permit may be  
2 based:

3 Appeals of orders, decisions or determinations made by the Building  
4 Official *related to the application or interpretation of this code* shall  
5 be made pursuant to the Redmond Zoning Code Section  
6 21.76.060(1), Appeals of Type I and II Permits, as said section  
7 currently exists or is hereafter amended, modified or recodified.

8 (emphasis supplied). RMC 15.08.055(2) refers to this same provision as a substitute for Section  
9 112 of the 2015 International Existing Building Code (IEBC) governing appeals. Together, these  
10 two sections establish the limits of the Hearing Examiner’s subject matter jurisdiction in building  
11 permit appeals: the Examiner may only consider appeals “related to the application or  
12 interpretation of [the IBC or IEBC].” Because Andorra’s appeal does not raise any issues  
13 regarding the City’s application or interpretation of the IBC or IEBC, the Hearing Examiner lacks  
14 subject matter jurisdiction over Andorra’s appeal and the appeal must be dismissed. *Inland  
15 Foundry Co. v. Spokane Cty. Air Pollution Control Authority*, 98 Wn. App. 121, 123-24, 989 P.2d  
16 102 (1999).

17 Andorra does not address the specific language of RMC 15.08.050(6) and RMC  
18 15.08.055(2) in its Response, instead concentrating on other sections of the RZC, IBC, and IEBC  
19 that it claims provide the Hearing Examiner with jurisdiction over its appeal. Andorra misreads  
20 these sections.

21 First, Andorra misreads the decision criteria set forth in RZC 21.76.060.D.2 to argue that  
22 this section provides it the right to appeal non-building code related issues in this proceeding. In  
23 fact, the opposite is true. RZC 21.76.060.D.2 reads as follows:

24 Decision Criteria. The decision of the department director shall be  
25 based on the criteria for the application set forth in this code, *or in*  
26 *the applicable uniform or international code in the case of building*  
*and fire-related permits*. The decision shall include any conditions  
necessary to ensure consistency with the applicable development  
regulations. The department director may consult with the Technical  
Committee, the Design Review Board, or the Landmarks and  
Heritage Commission on any Type I application, but the final  
decision-making authority on such applications remains with the

1 department director.  
2 (emphasis supplied). When the word “or” is used to separate two phrases in a statute or ordinance,  
3 the phrases must be construed as disjunctive, i.e., as creating two independent alternatives, unless  
4 there is a clear legislative intent to the contrary. *HJS Dev., Inc. v. Pierce Cty.*, 148 Wn.2d 457,  
5 473 n. 95, 61 P.3d 1141 (2003); *State v. Weed*, 91 Wn. App. 810, 813, 959 P.2d 1182 (1998). The  
6 emphasized language in RZC 21.76.060.D.2 therefore makes it clear that when the decision at  
7 issue is a building permit, the decision is to be based solely on the criteria set forth in “the  
8 applicable uniform or international code,” in this case the 2015 IBC and 2015 IEBC, and not on  
9 any other criteria in any other section of the RZC. When this is understood, the meaning of the  
10 language relied upon by Andorra in the second sentence of RZC 21.76.060.D.2, also becomes  
11 apparent: the “applicable development regulations” that the director may impose conditions to  
12 ensure consistency with are “the applicable uniform or international code” under which the  
13 decision must be made. Andorra’s attempt to stretch the meaning of “applicable development  
14 regulations” to cover the issues raised in its appeal is contrary to the plain language of the RZC.

15 Andorra’s argument concerning Sections 105.4 of the IBC and IEBC fares no better. Those  
16 sections simply provide that the issuance of a building permit which complies with the IBC or  
17 IEBC does not constitute an approval to violate any other City code or ordinance. Nothing in those  
18 sections require, expressly or by implication, that the City must determine that all other provisions  
19 of all other City’s codes are met by a proposal in order to issue a building permit. In fact, if that  
20 were the case, there would be no need for Section 105.4 of the IBC and IEBC for every building  
21 permit would be issued only after every provision of the City’s codes had been reviewed and  
22 determined to be complied with. A building permit’s implied compliance with all municipal codes  
23 would also have grave consequences for cities issuing such permits, given that such permits  
24 become conclusively valid and not subject to collateral attack if no timely LUPA appeal is filed,  
25 even if the permit was somehow issued in error or would otherwise have been invalid. *Chelan*  
26 *Cty. v. Nykreim, supra*, 146 Wn.2d 904, 932, 115 P.2d 286 (2005); *Habitat Watch v. Skagit Cty.*,

1 *supra*, 155 Wash.2d 397, 410–11, 120 P.3d 56 (2006). Andorra’s attempted construction of  
2 Section 105.4 of the IBC and IEBC as authority for their appeal is not consistent with any logical  
3 construction of those sections.

4 Andorra’s argument that it is entitled to make a “change of use” claim as a “procedural  
5 error” under RZC 21.76.060.I.2.b.ii also fails. RZC 21.76.060.I.2.b.ii specifies what the completed  
6 appeal form must contain; it says nothing about what issues the Hearing Examiner has jurisdiction  
7 to hear. Again, that jurisdiction is limited by RMC 15.08.050(6) and RMC 15.08.055(2) to issues  
8 “related to the application or interpretation of [the 2015 IBC and IEBC].” Andorra’s change of  
9 use issue is not related to procedures found in the IBC or IEBC and is therefore outside the Hearing  
10 Examiner’s jurisdiction.

11 Andorra also mischaracterizes the facts underlying the Hearing Examiner’s Ruling on  
12 Motions from Each Party in *In the Matter of the Appeal of WPDC Cleveland, LLC*, attached as  
13 Exhibit A to the Declaration of Dean Williams in Support of Omnibus Response. In that case, as  
14 the Hearing Examiner will recall, the matter at issue was not a change of land use under the RZC,  
15 but a change in occupancy classification under the IBC and IEBC. *See*, second paragraph of Ruling  
16 on Motions from Each Party. Under Section 302.1 of the 2015 IBC, the occupancy of structures  
17 is divided into ten separate occupancy groups, including Storage Groups S-1 and S-2 and Business  
18 Group B.<sup>1</sup> The previous use of the structure at issue in the *WPDC* appeal was for storage and the  
19 occupancy classification was S-2. Because the project applicant in the *WPDC* matter was seeking  
20 to covert the structure to a marijuana sales outlet, an occupancy change to B was required. And  
21 because the IBC occupancy classification was being changed, the appeal in the *WPDC* matter was  
22 properly within the Hearing Examiner’s jurisdiction under RMC 15.08.050(6) and RMC  
23 15.08.055(2) as it was “related to the application or interpretation of [the 2015 IBC and IEBC].”  
24 Here, no such change in occupancy is taking place. The *WPDC* matter is wholly irrelevant to the  
25 current matter before the Hearing Examiner.

26 <sup>1</sup> The 2015 IBC can be accessed at <https://codes.iccsafe.org/content/IBC2015>.

1 Finally, the City wishes to respond to Andorra's mischaracterization of the City's position  
2 as being that a building permit must be issued even where the permit violates other provisions of  
3 the City Code. That is not what the City is saying at all. Instead, the City's position is simply that  
4 building permit appeals are limited to building code issues and non-building code issues are  
5 handled separately. Other provisions of the City's Codes, such as the City's site plan requirements  
6 (when site plan entitlement is required under RZC 21.76.070.Y), the City's code enforcement  
7 process (RMC 1.14), and the City's business license requirements (RMC 5.04.140), all provide  
8 the necessary assurances that the City's land use codes will be complied with and that no use can  
9 locate in the City that is not allowed by the applicable land use regulations. Unfortunately, Andorra  
10 has chosen to appeal a building permit for a demising wall, and that does not provide the avenue  
11 for Andorra to raise the issues it wishes to raise.

12 **III. CONCLUSION**

13 For the reasons stated above and in the City's Motion to Dismiss, this appeal raises issues  
14 outside the Hearing Examiner's subject matter jurisdiction. The City respectfully requests that the  
15 Hearing Examiner dismiss this appeal.

16 DATED this 7<sup>th</sup> day of July, 2020.

17 OGDEN MURPHY WALLACE, PLLC

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20 By /s/ James E. Haney  
James E. Haney, WSBA #11058  
Attorney for City of Redmond  
[jhaney@omwlaw.com](mailto:jhaney@omwlaw.com)

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**DECLARATION OF SERVICE**

I, Erin M. Kelly, an employee of Ogden Murphy Wallace, PLLC, certify that on the date below, I filed and served this Reply in Support of Motion to Dismiss via email only to the parties listed below:

***Hearing Examiner***

Hearing Examiner Sharon Rice  
c/o Kalli Biegel  
Deputy City Clerk  
City of Redmond  
15670 NE 85<sup>th</sup> Street  
P.O. Box 97010  
Mail Stop 3NFN  
Redmond, WA 98073-9710  
Via email to [kbiegel@redmond.gov](mailto:kbiegel@redmond.gov)

***Appellant Attorney***

Vicki E. Orrico  
Dean Williams  
Johns Monroe Mitsunaga Koloušková, P.L.L.C.  
11201 SE 8<sup>th</sup> St., Suite 120  
Bellevue, WA 98104  
Via email to [orrico@jmmlaw.com](mailto:orrico@jmmlaw.com)  
and [williams@jmmlaw.com](mailto:williams@jmmlaw.com)  
with copy to [charlot@jmmlaw.com](mailto:charlot@jmmlaw.com)

***Applicant Attorney***

Duncan S. Manville  
Savitt Bruce & Wiley, LLP  
1425 Fourth Avenue, Suite 800  
Seattle, WA 98101-2272  
Via email to [dmanville@sbwllp.com](mailto:dmanville@sbwllp.com)  
With copy to [rgreer@sbwllp.com](mailto:rgreer@sbwllp.com)

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 7th day of July, 2020.

*/s/ Erin Kelly* \_\_\_\_\_  
Erin Kelly  
*Legal Assistant*  
ekelly@omwlaw.com