BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the Appeal of **Andorra Ventures LLC** Of Building Permit BLDG-2020-01804	NO. BLDG-2020-01804 **PLAUSIBLE PRODUCTS, LLC, D/B/A HASHTAG CANNABIS'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

A. Introduction.

To obtain the Building Permit, Hashtag did not need to establish that its retail marijuana business would comply with code provisions relating to parking or location. The code provisions that Andorra claims the City disregarded or erroneously applied were not among those that the City was required to consider in evaluating Hashtag's building-permit application. The Hearing Examiner therefore lacks subject-matter jurisdiction over this appeal, which improperly seeks review of decisions irrelevant to issuance of the Building Permit.

Andorra has no colorable argument to the contrary. It grasps at straws in an effort to keep its appeal afloat, but its argument based on IBC § 105.4 is meritless. This failure moots its attempts to conjure factual issues that could otherwise preclude summary judgment on its appeal, and those misguided attempts fail as a matter of law for other reasons as well. The Hearing Examiner should grant Hashtag's and the City's dispositive motions.

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B. The City Did Not Issue the Building Permit in Violation of the IBC.

The Building Permit did not, as Andorra Ventures contends, "purport[ ] to authorize the construction of a marijuana retail sales establishment within a General Sales or Services use building." (Response 3:20–21.) It authorized Hashtag to build a demising wall and upgrade a restroom for ADA compliance. (Bowers Decl., Ex. D.) The construction standards applicable to demising walls and bathrooms are set forth in the IBC, and they are the same regardless of what products may be sold or what services may be provided in a particular retail space. Land-use regulations concerning parking and location have nothing to do with whether these standards are met. And no provision of the Redmond Municipal Code would have authorized the City to deny Hashtag's building-permit application on the ground that Hashtag's retail marijuana business would not meet parking or location requirements.

Andorra attempts to dodge this inescapable conclusion by contending that the Building Permit is "invalid" under § 105.4 of the IBC because it "fails to comply with other ordinances of the jurisdiction." (Response 5:19–20.) But this is plainly incorrect. Again, the Building Permit did not "purport[ ] to authorize the construction of a marijuana retail sales establishment," allegedly in violation of parking or location requirements. (*Id.* at 3:20–21.) It did not "require[ ] a change of use." (*Id.* at 1:18–19.) It merely authorized construction of a demising wall and renovation of a bathroom. Whether Hashtag could properly use the space containing the new wall and the upgraded bathroom to sell cannabis was a separate issue that the Washington State Liquor and Cannabis Board ("WSLCB") and the City resolved in Hashtag's favor when they granted Hashtag a marijuana license and the Business License, respectively. Those licenses are not at issue in this appeal.

Because Andorra cannot show any error by the Redmond Building Official "related to the application or interpretation" of the IBC, under RMC 15.08.050(6) the Hearing Examiner lacks authority to consider Andorra's assignments of error, and should dismiss this appeal.

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C. Andorra's Other Arguments Are Irrelevant and Unavailing.

Since this appeal should be dismissed for the straightforward reasons set forth in Hashtag's and the City's motions and reiterated above, the rest of Andorra's arguments are irrelevant surplusage. Hashtag nevertheless addresses several of them in the interest of completeness.

1. Andorra's argument based on the Origins appeal is without merit.

Andorra suggests that the Hearing Examiner should deny the pending motions based on her Ruling on Motions From Each Party in the Origins appeal (Appeal of Building Permit BLDG-2016-09802). (Response 7:1–13.) This suggestion is profoundly disingenuous, since in the Origins appeal Andorra took a position diametrically opposed to the one it now advocates. In the Origins appeal, Andorra defended the City's issuance of a building permit even though Andorra had not yet applied for a site-entitlement permit or a business license. Now, talking out of the other side of its mouth, Andorra contends that the City must condition approval of building permits on property owners first "obtaining the appropriate change in use." (*Id*. at 6:4–6.)

It would be one thing if Andorra had made the wrong arguments in the Origins appeal and were now talking sense. But as discussed above, Andorra's position in this appeal has no merit whatsoever. And neither does Andorra's facile suggestion that disputed issues of fact must somehow exist in this case because the Hearing Examiner determined that they were present in the Origins appeal. In fact, a comparison of the two appeals shows exactly why Andorra is wrong this time around.

As the Hearing Examiner well knows, the proposed construction at issue in the Origins appeal was more extensive than the work at issue here, and included, according to the appellant in the Origins appeal, exterior work and alterations that would have increased the square footage of the Origins building. RMC Figure 21.76.020A indicates that as part of the development application review process, a land use permit need only be obtained before a building-permit application is submitted when the land-use permit is "required as noted in RZC

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21.76.020.D." *See also* RMC 21.76.020(H)(4) (stating that "[a]ll land use permits *required by the RZC* must be obtained before any building or construction permit may be issued"; and that "[a]ll building and construction permits shall comply with the approved land use permit(s), *if a land use permit is required*") (emphasis added). Under RMC 21.76.020(D)(2), a land use permit is required for "interior tenant improvements that propose additional square footage," but is *not* required for interior T.I. work that will not result in increased square footage, or for "[t]enant improvements … not encompassing or triggering modification to the exterior of an existing building or site." In the Origins appeal, the scope of Andorra's proposed T.I. work was shifting and unclear, and for this and other reasons the Hearing Examiner concluded that summary judgment was foreclosed by disputed issues relating to whether Andorra's building-permit application had brought land-use regulations into play. Here, by contrast, there is no dispute that Hashtag did not increase the Building's square footage or modify its exterior. Thus, as a matter of law, RMC 21.76.020(D)(2) did not require Hashtag to apply for or obtain a land-use permit, and Andorra has no plausible argument that issuance of the Building Permit should have been conditioned on a showing of compliance with parking or location requirements.

2. Andorra cannot collaterally attack unrelated land-use decisions by appealing the City's issuance of the Building Permit.

Andorra offers several excuses for its failure to appeal the City's issuance of the Business License, and contends that such failure is not "[p]reclusive" of the issues raised in this appeal. (Response 7:14 – 8:5.) But those arguments miss the point entirely. The problem with Andorra's appeal has nothing to do with inexcusable neglect or issue preclusion. The problem is that Andorra is asking the Hearing Examiner to exceed the scope of her authority.

That said, it is not at all clear that "[t]here is no appeal set out in code for the approval of a business license" (*id.* at 7:17–18): The issuance of a business license fits the definition of a Type I decision set forth in RMC Table 21.76.050A. RMC 21.76.050(D) indicates that RMC ch. 21.76 applies to all "permit[s and] land use action[s]"—not merely those enumerated in

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RMC Table 21.76.050B. And RMC 21.76.060(D)(4) provides for appeals of Type I decisions to the Hearing Examiner.

Moreover, Andorra could have participated in the process that resulted in the WSLCB issuing a state marijuana license authorizing Hashtag to operate the Store on the Property. Hashtag submitted a change-of-location application to the WSLCB in mid-December 2019. (Reply Declaration of Logan Bowers in Support of Plausible Products, LLC, d/b/a Hashtag Cannabis's Motion for Summary Judgment ["Bowers Reply Decl."] ¶ 3.) As required by WAC 314-55-020(3), Hashtag posted a notice on the Building advising the public that it was seeking WSLCB approval to operate a marijuana retail business on the Property. (*Id.*) Hashtag posted this notice for fourteen days beginning on January 9, 2020. The City of Redmond approved Hashtag's change-of-location application on January 17, 2020, and the WSLCB approved it on January 22, 2020. On March 18, 2020, Hashtag applied to the WSLCB for a license to operate its retail marijuana business on the Property. Hashtag received its license from the WSLCB on May 11, 2020.

WAC 314-55-050(10) states that "the WSLCB shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any … (b) Playground." WAC 314-55-160(1) allows "any person or group" to "comment in writing to the WSLCB regarding an application." As far as Hashtag knows, Andorra submitted no comments to the WSLCB regarding Hashtag's change-of-location or license applications. (Bowers Reply Decl. ¶ 3.) When the WSLCB approved the applications, it necessarily determined—as did the City—that Redmond's Downtown Park is a park, not a playground.

As a matter of law, it would be improper for the Hearing Examiner to allow Andorra to nullify, through an appeal of the Building Permit, land-use decisions made by the City and the WSLCB in connection with separate change-of-location and business-license applications. Such a result would be especially inappropriate where Andorra did not avail itself of regular and proper avenues for contesting these applications.

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3. Andorra's arguments regarding Hashtag's parking facilities are meritless.

Hashtag reiterates the arguments in its Motion for Summary Judgment regarding parking, most of which Andorra did not address in its Response. Most significantly, of course, Andorra's assignments of error regarding parking fail as a matter of law because the Redmond Building Official was not required to assess compliance with parking requirements in order to issue the Building Permit. Hashtag could leave it at that, but the egregious factual inaccuracies in Andorra's Response impel Hashtag to devote a few additional paragraphs to parking in order to correct the record.

Andorra argues that "the decision to require only two parking spaces per 1000 sq. ft. of floor area is not supported by the evidence and represents a clearly erroneous decision" because, supposedly, Hashtag "potentially has 43 customers per hour competing for just three parking spaces." (Response 5:8–9, 8:24–25.) This is wrong.

First, two spaces per 1,000 square feet of floor area is what RMC Table 21.10.030C(8) requires for marijuana retail businesses. Andorra cites no authority that would empower the City to simply disregard its own code provisions and impose enhanced parking requirements on successful retailers.

Second, Hashtag's parking lot has eight spaces, not three. Andorra grumbles that "it is difficult to understand how eight cars would safely fit" in the lot (Response 4:16–17), but offers no actual evidence to support this critique. There is simply no basis for the Hearing Examiner to conclude that Hashtag's parking lot comprises only three spaces.

Finally, Andorra's assertion that more than 43 customers per hour visit Hashtag's Redmond Store is a fabrication. Hashtag did not have "$340,675 in sales for the month of March 2020," as Andorra contends. (Response at 5:3–4.) As Hashtag clearly stated at page 2, line 13 of its Motion for Summary Judgment, it opened its Redmond Store on *May 15*, 2020. (Bowers Reply Decl. ¶ 4.) It was still building out the Store in March 2020, and had no revenue or customers that month. (*Id.*) The sales and customer numbers that Andorra cites in its Response are for Hashtag's Seattle location. (*Id.*) In June 2020, Hashtag's Redmond Store

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had only $170,144.32 in revenue and 4,761 customers—about 159 per day, or 12 per hour. (*Id.*) And of course, many of these customers carpooled, or arrived via public transportation or on foot. (*Id.*) And many of them simply dropped in to pick up online orders, only staying for a few minutes. (*Id.*) In short, there is no evidence of the sort of congestion that Andorra suggests might be clogging Hashtag's parking lot and forcing customers to back out into traffic.

D. Conclusion.

Andorra has not rebutted Hashtag's or the City's legal arguments, much less identified any issue of fact that would preclude dismissal of this appeal. The Hearing Examiner should therefore grant Hashtag's and the City's dispositive motions.

DATED: July 7, 2020.

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this date, I caused a true and correct copy of the foregoing document to be served on the following in the manner(s) indicated:

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