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

7 In the Matter of the Appeal of

8 **Eugene Zakhareyev**

9 of the June 12, 2018 approval
10 Site Plan Entitlement (LAND-2013-00171)
11 for the Anjuman-e-Burhani Mosque
at 15252 NE 51st Street, Redmond

Appeal No. LAND-2018-00701

**APPLICANT ANJUMAN-E-
BURHANI'S MOTION TO DISMISS
ISSUES 1, 2, 3, 6, 9, AND 10**

12 **I. INTRODUCTION AND RELIEF SOUGHT**

13 Applicant Anjuman-e-Burhani ("AEB") moves for dismissal of Issues 1, 2, 3, 6, 9, and 10
14 because they are outside the scope of the Examiner's review authority and/or jurisdiction.

15 **II. FACTS RELEVANT TO MOTION**

16 On February 13, 2014, AEB filed an application for Site Plan Entitlement approval (File
17 No. LAND-2013-00171), proposing to construct a new approximately 22,000-square-foot
18 mosque facility at 15252 NE 51st Street in the City ("AEB Mosque"). Technical Committee
19 Type II/Site Plan Entitlement Notice of Decision, File No. LAND-2013-00171 (June 12, 2018)
20 ("Decision") at 4.¹ The proposed AEB Mosque included prayer areas, classrooms for religious
21 teachings, kitchen/dining facilities, a parsonage, and parking. *Id.* The site is in the Single-
22 Family Urban Residential (R-5) zone, governed by RZC 21.08.080. *Id.* at 5.

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24 ¹The Site Plan Entitlement Notice of Decision is attached as Exhibit A to the City's Motion to Dismiss State
25 Law Issues for Lack of Subject Matter Jurisdiction ("City's Motion to Dismiss") filed August 10, 2018. AEB adopts
26 and incorporates by reference the City's Motion to Dismiss.

1 Pursuant to Redmond Zoning Code (RZC) 21.76.080, the City gave the required public
2 notice of the application on March 12, 2014. Decision at 4. Appellant Eugene Zakhareyev
3 (“Appellant”) became a “party of record” pursuant to RZC 21.78.P during the City’s Type II
4 review of the application.

5 One of the initial questions the City had to resolve was how to calculate the seating
6 capacity in the mosque. A religious institution with fewer than 250 seats is permitted outright in
7 the R-5 zone; a religious institution with 250 – 750 seats requires a conditional use permit. RZC
8 21.08.080, Table 21.08.080C. Various development criteria, including parking, are predicated on
9 seating capacity. RZC 21.08.280.C.2; RZC 21.08.280.D. The City has a specific code provision
10 addressing calculation of seating capacity in “churches, temples, synagogues, and other places of
11 worship.” RZC 21.08.280.B. However, RZC 21.08.280.B explicitly addresses only three
12 “seating” categories: individual fixed seats; pews or benches; and general assembly areas with
13 movable chairs or other portable seating fixtures. The RZC does not explicitly address places of
14 worship in which congregants use prayer rugs instead of seating fixtures.

15 Pursuant to an Administrative Interpretation issued April 29, 2015, the City determined
16 that for purposes of calculating seating capacity in the mosque, the area where an individual
17 would remain stationary for a period of time is equivalent to an “individual fixed seat” under
18 RZC 21.08.280.B.1. Decision at 5.

19 The City reviewed the project under the State Environmental Policy Act (SEPA),
20 concluding on March 9, 2017 that a Determination of Non-Significance is the appropriate
21 threshold determination for the project. Decision at 5. The SEPA determination was appealed by
22 Appellant and Susan Wilkins on April 7, 2017. Ms. Wilkins subsequently withdrew her SEPA
23 appeal in a July 20, 2018 letter to the Office of the Hearing Examiner. On August 6, 2018,
24 counsel for Appellant notified counsel for AEB and the City via e-mail that Appellant was also
25 withdrawing his SEPA appeal. On August 7, 2018, the Hearing Examiner entered an Order
26

1 Acknowledging Withdrawal and Dismissing Appeal, dismissing Appeal No. LAND-2017-00348
2 (SEPA-2017-00172).

3 On June 12, 2018, the Technical Committee issued its decision approving the AEB
4 Mosque project with conditions.² Decision at 4, 8-16. On June 27, 2018, Appellant submitted to
5 the City an Appeal Application Form with a nine-page attachment (“Appeal Attachment”).

6 Appellant asserts the following errors or omissions by the City in approving the Site Plan
7 Entitlement:

- 8 1) The City failed to comply with “additional regulations pertinent to the site driveway
9 located on fully controlled limited access highway” (Appeal Attachment at 1-3);
- 10 2) The City erred in calculating seating capacity under RZC 21.08.280.B and therefore
11 erred in failing to require a Conditional Use Permit (Appeal Attachment at 3-4);
- 12 3) The City erred in calculating seating capacity under RZC 21.08.280.B and therefore
13 erred in calculating required parking based on seating capacity (Appeal Attachment at
14 4);
- 15 4) The City erred in calculating required setbacks under RZC 21.08.280.D based on
16 building height (Appeal Attachment at 4-5);
- 17 5) The City erred in calculating required parking under RZC 21.08.280.C.2 (Appeal
18 Attachment at 5-6);
- 19 6) The City erred in “reviewing traffic impacts” of the project (Appeal Attachment at 6);
- 20 7) The City erred in allowing a “guest apartment” under RZC 21.08.080 in addition to
21 the parsonage (Appeal Attachment at 7);
- 22 8) The City erred in “not applying scale, bulk and neighborhood character” from
23 Comprehensive Plan Policies LU-9, LU-30, OV-11, and OV-12 and design standards
24 in RZC 21.60.020 and RZC 21.60.040 (Appeal Attachment at 7-8);
- 25 9) The City erred in “not conditioning the application on overall building capacity”
26 (Appeal Attachment at 8);

² The City did not mail the Decision until June 13, 2018. City’s Motion to Dismiss at 3 n.2.

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- 10) The City erred “by not incorporating any growth projections into its review process” (Appeal Attachment at 8); and
- 11) The City erred by failing to comply with transit-related setbacks under RZC 21.28.030 (Appeal Attachment at 8-9).

III. ARGUMENT

A. Issues 1, 6, 9, and 10 Are Beyond the Hearing Examiner’s Review Authority.

The Redmond Municipal Code circumscribes the Hearing Examiner’s review authority, limiting it to issues of compliance with the Redmond Zoning Code (RZC). RMC 4.28.010; RMC 4.28.020. In appellate review of a Type II decision such as site plan entitlement, the Examiner may grant an appeal only if the Examiner determines that the appellant has carried the burden of proving that the decision is not supported by a preponderance of the evidence or was clearly erroneous. RZC 21.76.060.I. To prevail in an appeal of a Type II Site Plan Entitlement decision, the appellant must show that the proposed project fails to satisfy applicable approval criteria for the Technical Committee’s decision. Those approval criteria are limited to compliance with SEPA and compliance with the RZC. RZC 21.76.070.Y.3.

In this appeal, the only relevant review criteria are in the RZC, because Appellant has already voluntarily dismissed his SEPA appeal.³ In Issues 1, 6, 9, and 10, Appellant does not assert any failure by the Technical Committee to comply with the RZC. Accordingly, those issues are beyond the scope of the Examiner’s appellate review authority in this proceeding and must be dismissed.

³ Order Acknowledging Withdrawal and Dismissing Appeal (August 7, 2018).

1 1. *Issue 1 must be dismissed because alleged WSDOT requirements affecting*
2 *City-owned right-of-way are outside the scope of the Examiner's review*
3 *authority.*

4 Appellant contends the City (a) changed “the type of approach for the property” without
5 authority, (b) “erred in allowing access for religious use,” and (c) did not comply with “WSDOT
6 requirements” in a letter dated August 24, 2012. The “additional regulations” Appellant seeks to
7 enforce in this appeal proceeding are:

- 8 • A 1991 deed from the Washington State Department of Transportation (WSDOT)
9 to the City of Redmond;
- 10 • RCW 47.24.020(2);
- 11 • WAC 468-58-010(1);
- 12 • WAC 468-58-030(1)(a); and
- 13 • A letter dated August 24, 2012 from WSDOT.

14 Appeal Attachment at 1-3. None of these “additional regulations” arises from the RZC.

15 The Hearing Examiner does not have jurisdiction to adjudicate issues of State law,
16 determine compliance with WSDOT regulations, enforce deeds, review access easements, or
17 interpret WSDOT comments or advice to the City.⁴ Issue 1 is not based on any RZC
18 requirement for site plan entitlement. Accordingly, Issue 1 is outside the Examiner’s review
19 authority and must be dismissed.

20 2. *Issues 6, 9, and 10 must be dismissed because they do not involve noncompliance*
21 *with any applicable RZC requirement.*

22 Appellants’ Issues 6, 9, and 10 set forth complaints about the City’s review process and
23 conditions on the project, but do not identify any noncompliance with any applicable RZC
24 requirement. In Issue 6, Appellant asserts that the City erred in “reviewing traffic impacts” of the
25 project. In Issue 9, Appellant asserts that “overall building capacity” would result in

26 ⁴ WSDOT has not appealed the City’s decision or otherwise brought any objections before the Examiner.
See City’s Motion to Dismiss, Exhibits G and H.

1 “comparable or greater” traffic and parking impacts than those based on seating capacity of the
2 worship area. These issues *might* arguably be appropriate in a SEPA appeal, but this is not a
3 SEPA appeal. In Issue 10, Appellant objects to the City’s failure to “limit the congregation to the
4 current number and prohibit expansion.”⁵ None of these issues identifies a specific requirement
5 from the RZC applicable to site plan entitlement approval. Accordingly, Issues 6, 9, and 10 are
6 outside the Examiner’s review authority and must be dismissed.

7 B. Issues 2 and 3 Must Be Dismissed Because the Hearing Examiner Lacks
8 Jurisdiction to Review an Unchallenged Administrative Interpretation Issued in
9 2015.

10 Appellants’ Issues 2 and 3 both stem from Appellant’s disagreement with the way the
11 City calculated seating capacity in the AEB Mosque. Appellant contends the Technical
12 Committee erred in calculating the mosque’s seating capacity and, as a result, failed to require a
13 conditional use permit (Issue 2) and failed to require the appropriate amount of parking (Issue 3).

14 Appellant contends that the City was required to calculate seating capacity pursuant to
15 RZC 21.08.280.B.3, *i.e.*, by defining a “seat” as “seven square feet per person for the area seating
16 the general assembly with movable chairs or other portable seating fixtures,” instead of taking
17 into account the number of prayer rugs accommodated in the worship areas and treating that as
18 equivalent to individual fixed seats under RZC 21.08.280.B.1. The problem with Appellant’s
19 argument is that this issue was resolved by the Administrative Interpretation issued April 29,
20 2015 (*see* Decision at 5) – which Appellant should have appealed long ago.

21 The Administrative Interpretation addressed calculation of seating capacity in the context
22 of a mosque with prayer rugs, concluding that an area “where one would remain stationary for a
23 period of time” should be treated as equivalent to an individual fixed seat. Decision at 5. The
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25 ⁵ Even if it were required by the RZC (which it is not), such a condition would be blatantly unconstitutional.
26

1 Technical Committee followed this Administrative Interpretation here, determining that the
2 project has 150 seats for purposes of compliance with the R-5 zone regulations. *Id.*

3 Under the RZC, the Code Administrator has authority to issue Administrative
4 Interpretations of the code. RZC 21.76.070.D. Administrative Interpretations are processed as
5 Type I reviews. RZC 21.76.100.D.8; RZC 21.76.050.C, Table 21.76.050B; RZC 21.76.070.D.3.
6 Appeals of Type I decisions are made to the Hearing Examiner in an open record hearing. RZC
7 21.76.050.F.1. Appeals of Type I decisions are required to be submitted within 14 days
8 following the decision. RZC 21.76.060.I.2.c.

9 Appellant's Issues 2 and 3 are nothing more than an untimely challenge to the 2015
10 Administrative Interpretation. As required under RZC 21.76.060.I.2.c, any appeal of the April
11 29, 2015 Administrative Interpretation was required to have been filed by May 13, 2015. The
12 Administrative Interpretation is final; Appellant has not timely invoked the Examiner's appeal
13 jurisdiction to review it. Issues 2 and 3 must be dismissed.

14 IV. CONCLUSION

15 For the foregoing reasons, the Hearing Examiner should dismiss Issues 1, 2, 3, 6, 9, and
16 10 from this appeal.

17 Respectfully submitted this 10th day of August, 2018.

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