

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

In the Matter of the Appeal of)	Appeal Nos.
)	
Eugene Zakhareyev)	
)	LAND2018-00701 (SPE)
)	
)	RULING ON CITY AND APPLICANT
)	MOTIONS TO DISMISS
Of the June 12, 2018 approval)	
Site Plan Entitlement (LAND2013-00171))	
for the Anjuman-E-Burhani Mosque)	
<u>at 15252 NE 51st Street, Redmond</u>)	

Motions to Dismiss

Consistent with the July 16, 2018 pre-hearing scheduling order, both the City and the Applicant submitted motions to dismiss claims in the above-captioned appeal.

The City's August 10, 2018 motion seeks to dismiss claims related to the proposed access driveway that are based on state law due to the lack of subject matter jurisdiction over such claims by the City's hearing examiner. The Applicant's August 10, 2018 motion seeks to dismiss appeal issues 1, 2, 3, 6, 9, and 10 also based on asserted lack of jurisdiction. Consistent with the scheduling order, counsel for the Appellant responded on August 20, 2018.

Jurisdiction

The Hearing Examiner Rules of Procedure, at V.A.2.g, adopted pursuant to RMC 4.28.060, authorize the City's Hearing Examiner to "consider and rule upon all procedural and other motions appropriate to the proceeding... ."

As noted in the Appellant's response to the motions, the criteria for site plan entitlement approval are broad and incorporate the entirety of the Redmond Zoning Code (RZC). Pursuant to RMC 21.76.070.Y.3.a, the "Decision Criteria" are as follows:

The Technical Committee, composed of the Departments of Planning and Public Works, shall review all Development Review permits with the State Environmental Policy Act and the RZC.

In this case, the Appellant initially filed and subsequently withdrew his SEPA appeal. Thus, the only challenges properly included in these proceedings are those to RZC applicable provisions.

Issue 1 - Driveway Access

The appeal alleges that the approved site plan entitlement (SPE) violates a 1991 deed by which the subject property acquired driveway access and various Revised Code of Washington (RCW) and Washington Administrative Code (WAC) provisions, but makes no allegations of failure to comply with any specific road standard or other substantive provisions of the Redmond Zoning Code (RZC) or other applicable City Policies. While access to the subject property is naturally an important issue for consideration in SPE review, to the extent that the Appellant has a remedy for claims alleged in appeal issue 1, those claims are properly within the scope of authority of the Washington courts rather than a City hearing examiner. Lacking authority to grant relief on these claims, the examiner will dismiss these claims from the proceedings.

Issue 2 - City Should have required a Type III (Quasi Judicial) permit rather than a Type II SPE

The hearing examiner's authority to hear appeals of SPEs (a Type II decision) is established in RZC 21.76.060.I.1, which specifies that the examiner has appellate authority over decisions of the department director or designee. RZC 21.76.060.D defines *decision* as "[a] written record of the director's decision shall be prepared in each case and may be in the form of a staff report, letter, the permit itself, or other written document indicating approval, approval with conditions, or denial." The appeal does not cite to any authority conferring jurisdiction on the examiner to hear a challenge of a decision not issued, or to direct the Director to require a different kind of review for a given project, and on review of the Code, none is found. Issue 2 is dismissed.

Issue 3 - Challenge to Seating Capacity Analysis and Resulting Parking Demand

Appeal Issue 3 contends that required parking was miscalculated based on a miscalculation of seating capacity that was fully. The Appellant contended that if seating capacity was correctly calculated, it would exceed 250 and Issue 3 contends that parking demand was therefore assessed on an erroneously low number of seats and does not comply with code. The undersigned is not persuaded by the Applicant's arguments that seating capacity and the resulting parking demand are outside beyond challenge. Issue 3 is not dismissed.

Issues 6, 9, and 10 - Challenges to the Adequacy of Traffic Impact Assessment

Issue 6 challenges the Applicant's traffic studies. Issue 9 alleges more specific error in the traffic and parking analysis, arguing traffic and parking impacts from the entire building were not included. Issue 10 asserts error because traffic analysis assumed there would be no growth in the membership of the AEB and seeks imposition of a condition prohibiting expansion of the current number of members. The Applicant essentially argues that these three issues should be dismissed for failure to cite specific RZC provisions with which the approval conflicts. It is true that the appeal document lacks RZC citations for these three appeal issues.¹ It is also true that the purpose of SPE review expressly includes review of "the adequacy of streets and utilities in the area of the subject property to serve the anticipated demand from the proposal." RZC 21.76.070.Y.1.d. The undersigned acknowledges that constitutionally based arguments against granting the requested relief of prohibiting expansion of membership for a place of worship will be anticipated. However, challenge to the growth projections in the project's traffic impact

¹ At the pre-hearing conference conducted on July 13, 2018, the Applicants and the City were expressly asked whether they required clarification of the issues alleged on appeal. Both declined the opportunity to request clarification of the issues.

assessment arguably fall within a review of the "adequacy of the streets.... in the area.... to serve... the anticipated demand from the proposal." Issues 6, 9, and 10 are not dismissed.

Order

Issue 1 is dismissed as it alleges claims that are beyond the scope of authority of the City's Hearing Examiner and the requested relief cannot be granted in this forum.

Issue 2 is dismissed. The City's Hearing Examiner lacks authority to direct what type of permit review is required for a given project, and again, the requested relief cannot be granted. Challenge to the seating capacity analysis, however, is within the scope of site plan entitlement review. Issue 3's challenge to parking demand based on seating capacity analysis is not dismissed.

The hearing will proceed as scheduled on September 10, 2018 at 9:00 am excluding Issues 1 and 2.

Decided August 24, 2018.

By:



Sharon A. Rice
Thurston City Hearing Examiner