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March 23, 2018

Ramin Pazooki
Local Agency and Development Services Manager
Washington State Department of Transportation
15700 Dayton Avenue North, NB82 - 240
PO Box 330310
Seattle, WA 98133-9710

Via Email:
pazookr@wsdot.wa.gov

Re: SR 520, Vicinity of N.E. 51st Street Interchange (MP10.74)
AEB Mosque Proposal

Dear Mr. Pazooki:

This office represents Eugene Zakhareyev, who resides at 5126 154th Avenue N.E. in Redmond. Mr. Zakhareyev regularly uses the off and on ramps to SR 520 in the vicinity of N.E. 51st Street. His home is near the site of a proposed commercial use, the AEB Mosque, located at 15252[1] N.E. 51st St. The AEB property is referenced herein as "the Subject Property." This property has a 14 foot driveway just off N.E. 51st Street and seeks to use that access to the public street system.

I write today to ask that the WSDOT deny any proposal for revised access to the Subject Property at that location because it is located within the limited access area of SR 520.

By way of background, on August 7, 1969, the City of Redmond and the WSDOT entered into a Right of Way Agreement as a part of the design and planning for SR 520. Under this agreement the City was transferred the right-of-way for streets along the SR 520 corridor in 1991. Included in that agreement (at page 2) and on Sheet 11 of the overall plan set for the project were references to N.E. 51st St. The drawing referenced the Subject Property, designated as Parcel "I-5326" on Sheet 11, and it contained "Access Notes" indicating that a "Type A Approach" would be reserved "for sole purpose of serving a single family residence." The agreement also provided that the City

[1] The current assigned address for the residential property is 15250; the site plans for the project propose the 15252 address.

"agrees to protect the control of access" to areas of N.E. 51st St. King County records show the parcel is 1.13 acres; apparently the preservation of this Type A access was done to avoid the necessity of the state acquiring the entire I-5326 parcel, which would have been necessary if access had been eliminated entirely.

On February 27, 2009, Lorena Eng, the WSDOT Regional Administrator for the Northwest Region, sent a letter to the architect for a proposed daycare facility on the Subject Property, which was then owned by a Mr. McCann. A copy of that letter is attached as Exhibit A for your ready reference. The daycare developer was requesting a change from the residential access to a commercial access to facilitate the daycare proposal. The letter denied this request, stating "we need to protect the safety and integrity of this busy interchange and cannot allow a commercial access."

Following the denial of commercial access by the Department, the subject parcel was conveyed to the AEB Mosque for $299,000 on August 4, 2010. This price reflected the limitation in access for the property that was established in 1969 and confirmed by the February 27, 2009 letter.

In June, 2014, the question of access to the subject property was revisited by the State in a series of emails, also attached hereto. See Exhibit B. In an email from Ramin Pazooki of WSDOT to Ann Salay in the Attorney General's office dated June 18, 2014, Mr. Pazooki asked two questions. *First*, whether WAC 468-58-030(1)(a) allowed commercial access onto a fully controlled limited access highway. *Second*, whether that WAC section applied even if the right-of-way had been transferred to the City of Redmond. Ms. Salay answered both questions in the affirmative in a June 20, 2014, email. Regarding the *first* question, she said: "WSDOT cannot allow commercial access onto a fully controlled limited access highway(.)," adding that "no Type A approaches are authorized either." Regarding the *second* question, Ms. Salay said: "Yes, WA- 58-030(1)(a) applies even though the city now owns both the ROW and limited access rights pursuant to the 1991 deed." She went on to say: "the city has no authority to modify the limited access as conveyed." (Emphasis in original.) Ms. Salay states that a modification in access in other locations is possible, "but not for a commercial approach because that is prohibited by WAC."

The AEB proposal should be considered as a commercial access because the volume of traffic from churches is consistent with commercial uses. In addition, the proposal cannot be considered a Type C approach, which is limited to a "special purpose." WAC 468-58-080. A church is a common and identified use and cannot be considered as a "special purpose" use. This is especially true where a decision to limit access was made many years ago and succeeding owners were aware of this access limitation. There appear to be no changed circumstances that suggest that the restriction on access at this location should be revisited. If anything, increasing volumes on SR 520 and its approaches indicate the wisdom of limiting the access to a single family

residential use as established fifty years ago. Setting a precedent of this nature, lacking any supporting regulatory guidance, is highly inappropriate.

To the extent that the current owner of the property contends that a denial of commercial access consistent with applicable regulations might be an unreasonable limitation on property, applicable Washington caselaw indicates otherwise. Thus in *Buechel v. State Dept. of Ecology,* 125 Wn.2d 196, 884 P.2d 910, (1994), a property owner claimed that denial of a permit for construction of a residence on a waterfront lot with less than 1,000 square feet of buildable property was unreasonable. In language pertinent here, the Supreme Court said:

> To some extent the reasonable use of property depends on the expectations of the landowner at the time of purchase of the property. If existing land regulations limit the permissible uses of the property at the time of acquisition, a purchaser usually cannot reasonably expect to use the land for prohibited purposes. Although not necessarily determinative, courts may look to the zoning regulations in effect at the time of purchase as a factor to determine what is reasonable use of the land. Presumably regulations on use are reflected in the price a purchaser pays for a piece of property. This landowner knew when he purchased this lot that it did not satisfy either the minimum lot size or the setback requirements of the MCSMP.

125 Wn.2d at 209-10. Here, the purchaser knew that the only access allowed was for a single family residence and the price paid for the property reflected that limitation.

The property owner may also contend that it was mislead by communications by state employees and that the WAC requirements limiting access should be waived or ignored because of that. However, Washington law is again clear that code requirement cannot be waived by agency staff:

> We have held that:
>
> > The acts of administering a zoning ordinance do not go back to the questions of policy and discretion which were settled at the time of the adoption of the ordinance. *Administrative authorities are properly concerned with questions of compliance with the ordinance,* not with its wisdom.
>
> (Italics ours.) *State ex rel. Ogden v. Bellevue,* 45 Wash.2d 492, 495, 275 P.2d 899, 902 (1954). This rule is of equal force in the administration of a building code. To permit another course of administrative behavior, thereby inviting discretion, may well result in violations of the equal protection of the laws. The code is positive in its requirements and contains no exceptional procedures like those employed here; hence, no city officer was authorized to permit its violation.

> The duty of those empowered to enforce the codes and ordinances of the city is to insure compliance therewith and not to devise anonymous procedures available to the citizenry in an arbitrary and uncertain fashion.

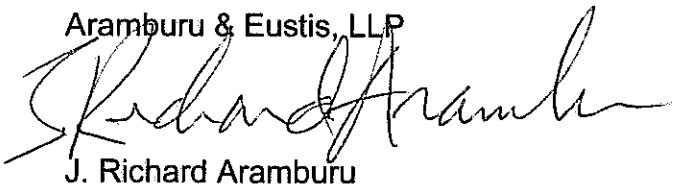
Eastlake Community Council v. Roanoke Associates, Inc., 82 Wn.2d 475, 482, 513 P.2d 36 (1973). As was made clear by the email from Ms. Salay, Department staff are not authorized to waive applicable and long-standing regulations prohibiting commercial access to limited access facilities and create anonymous procedures unequally applied.

Based on the foregoing, we request that the Department take immediate steps to inform both the City of Redmond and the project applicant that access to the subject property for use as a religious institution from the limited access areas along N.E. 51st Street is not permissible.

If you have any questions, please contact the undersigned. Please copy us with any communications with the project applicant and/or the City.

Sincerely,

Aramburu & Eustis, LLP



J. Richard Aramburu

JRA:cc
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Sarah Pyle, spyle@redmond.gov, Planner
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