

April 10, 2018

Dear Mayor John Marchione:

On behalf of Anjuman-e-Burhani, Seattle ("ABS"), I write to address the projected cost of \$67,000 that the City of Redmond is considering imposing on ABS in connection with obtaining ingress/egress easement rights for the property at 15250-15252 NE 51st Street in Redmond ("Property"). We are informed that, without this easement, site entitlement is not possible. For the reasons set forth below, we believe that the circumstances necessitate elimination of or a significant reduction in the cost.

As an initial matter, we feel it is important to remind the City that ABS is now closing on five years since starting the process toward site entitlement and eight years since purchasing the Property in August 2010. At the time of purchase, ABS had understood that obtaining pre-construction permits would be a streamlined process and that the existing zoning laws would accommodate ABS's intended uses, without condition or complication. However, the goalposts have been moved on ABS time and again, causing immense frustrations. For years, ABS has absorbed the brunt of constant delays through increased costs, lost opportunities, and disaffected membership morale. Yet, whatever issue that has popped up, ABS has continued to work cooperatively with the City in good faith to address the issue as timely and proactively as possible. We believe that this spirit of cooperation warrants the City's reconsideration.¹

Turning to the valuation, an appraisal prepared for the City determined that the highest and best use of the Property is for a single-family residence. Valbridge Property Advisors, Narrative Appraisal Report, No. 2016-6-CLS at 22. Based on that determination, the City is considering requiring a payment of \$67,000 to the City in return for the City granting ABS a 20-foot-wide easement onto NE 51st Street.

Before turning to the significant errors in that appraisal, it is important to recognize that the purpose of an appraisal is unrelated to traffic safety and design. WSDOT described its design requirements in a letter dated August 24, 2012. The first four paragraphs of that letter describe design requirements. The fifth paragraph concerns "a value determination." The purpose of the value determination is to identify the present value of any rights WSDOT acquired through condemnation and then conveyed to the City of Redmond which might be returned to the Property owner in approving a wider point of access. WSDOT did not assert any right to this value: WSDOT asserted that the City should retain any revenues resulting from the valuation. The outcome of the appraisal has no bearing on whether the roadway geometrics are consistent with WSDOT's requirements.

It is also important to recognize that there are significant legal uncertainties regarding whether ABS is required to pay for a wider point of access because it is not clear that the State acquired the former Property owner's rights with respect to the width of the Property's point of access. In a Judgment and Decree (the "Judgment") dated February 20, 1974, the State was obligated to pay for a

¹ We note that, although we were previously aware of potential issues with ingress/egress, we only learned about the current excessive cost on or about March 13, 2018.

portion of the then-owner's property condemned by the State for SR 520. The Judgment also established a right of "reasonable access" and, separately, referred to the width of that access ("to a Type A Road Approach"). Attachment A. What value, if any, was paid in relation to the width of the point of access, is unclear from the Judgment. Insofar as the Property was, in 1974, used exclusively for a single-family residence, the Judgment's reference to a Type A Road Approach may be no more than an acknowledgement of its then-current use and width.

This uncertainty is important to recognize because, if the State did not pay in 1974 to acquire the then Property owner's access rights, there is no basis for requiring ABS, as the current owner, to re-acquire those rights. Notably, WSDOT did not indicate in its August 24, 2012, letter that WSDOT was recommending an appraisal after applying its own internal review process. Under current WSDOT regulations, when WSDOT owns the fee title to a highway, a change for private access may trigger an appraisal of the value of the access change. See WSDOT Design Manual M 22-01.13 (July 2016) at 530-20 (section 530.10(2)(c)); WSDOT Right of Way Manual, Chapter 4, §4-4.1. Whether a valuation is, in fact, required appears to require input from a Review Appraiser. Here, it is not evident that a WSDOT Review Appraiser determined a parcel appraisal is appropriate.

Not only is an appraisal unrelated to roadway design and not clearly supported by the condemnation proceedings, but the City has neither a clear obligation nor right to require ABS to pay for a wider point of access. The City is the fee title holder to NE 51st Street. The State's Quitclaim Deed does not require the City to conduct an appraisal. The Deed states that the Deed is in accordance with an Agreement between the parties titled "GM 501", dated August 6, 1969, and in consideration of the City's "acceptance of maintenance and jurisdictional responsibilities of the lands herein conveyed."² The Quit Claim Deed only requires the City to use funds for street purposes when the City vacates, sells, or rents the subject property. Widening a point of driveway access does not involve any of those triggering events.

Likewise, the City cannot require ABS to pay for a wider point of access unless the City first determines, as a matter of law, that the former Property owners were compensated in 1974 in return for a restriction on the width of their point of access. Also, if the City requires payment for a wider point of access the City must be prepared to either re-acquire that right from ABS (if the City intends to limit use of an easement), or waive its right to limit use of the point of access. If the City determines that the additional six feet of width can only be used for the proposed religious facility, the City must also apply an appraisal methodology that determines the value of the access width while accounting for restrictions on its use.

ABS encourages the City to adopt a simpler approach. The City can recognize that ABS's proposed use of the Property does not involve a higher "after" value, and accordingly there is no need for an appraisal of the Property. The highest and best current use of the lot is to subdivide the Property. The City has repeatedly acknowledged that the Property could be subdivided for up to six single family residences. This is a use allowed outright under the City's zoning code. Subdivision of the Property would increase the Property's value significantly. By contrast, ABS's proposed use for the Property, for a

² The Quitclaim Deed provides that the City can use the subject property for road purposes only, but allows that other uses may be made with prior written notification to the State. This can be compared with RCW 47.24.020(15), which requires "prior written approval" by WSDOT of any vacation of a right-of-way granted by WSDOT to a city.

religious facility, represents a significantly lower value for the Property. Accordingly, the “after” value for any appraisal (i.e., use for a religious facility) involves a significant reduction in the Property’s value.³

In reaching the conclusion that subdivision is the Property’s highest and best use, the City should recognize that WSDOT’s current Access Controls do not prohibit residential subdivision as a permissible Type C use. WSDOT Design Manual M 22-01.12 (Nov. 2015) at 520-04. WSDOT has never been presented with a proposal to subdivide the Property. However, WSDOT did approve use of the Property for a use other than single-family residential, subject to meeting specific design requirements. To assume WSDOT would disapprove a request to allow access for a subdivision the City would have to speculate about WSDOT would apply its discretion to a project that has not been proposed.⁴ To assume otherwise would affect an unconstitutional and unlawful taking of ABS’s Property.

If the City determines that an appraisal is needed and the highest and best use of the Property is single-family residential, the City should re-appraise the Property using 2012 valuations. The City has been aware of the access-related elements of this project since 2012. Delaying the appraisal until 2017 has significant financial consequences. Whereas, for property in the area defined as “Area 530,” the median sale price was \$464,000 in 2010 and \$583,000 in 2014, it has now jumped to \$879,000 as of 2017. Indeed, when ABS first learned that it would need to widen the access to the Property in 2010, ABS was provided an estimate of less than \$10,000. The current cost, however, is almost seven times that amount. ABS has already spent hundreds of thousands of dollars since purchasing the Property, and it bears mention that the instant cost alone represents 22.5 percent of the original purchase price (i.e., \$67,000 / \$299,000). As a self-funded entity that relies solely on its members’ voluntary contributions, ABS cannot sustain such unexpected costs. The City is well-aware of this reality.

For the above reasons and more, we ask that the City reconsider whether an appraisal is needed. An appraisal is not required to meet WSDOT’s design requirements, and it is evident that the Property’s value for ABS’s proposed use is less than the Property’s highest and best use. If the City determines an appraisal is needed, the City should re-appraise the Property based upon a highest and best use for residential subdivision. If the City determines that the highest and best use of the Property is residential single-family use, the City should re-appraise the Property using 2012 data.

³ The Valbridge Appraisal wrongly assumed that the Property cannot be subdivided because WSDOT’s Class A designation limits use of the Property to a single-family residence. There is no basis for concluding that residential subdivision is not an available use of the Property. As noted above, it is not at all certain what legal significance the Class A reference had in 1974, or what significance that characterization carries today. Moreover, WSDOT does not clearly have jurisdiction to prohibit use of the Property for multiple residences. Even if it retained some authority with respect to NE 51st Street, this relates only to a point of access, and not to how the Property may be developed. Access rights relate to where and how a point of access may be located and used, not what development is appropriate on the dominant tenement. *See, e.g., Lee v. Lozer*, 88 Wn. App. 176, 188, 945 P.2d 214 (1997). Property rights and easements are entirely distinct. *See 810 Properties v. Jump*, 141 Wn. App. 688, 696, 170 P.3d 1209 (2007) (“An easement is a property right separate from ownership that allows the use of another’s land without compensation.”).

⁴ The Appraisal process itself is without critical safeguards. An appraisal conducted by WSDOT is required to comply with the requirements of WSDOT’s Right of Way Manual, including Chapter 5 Appraisal Review. This Appraisal, by contrast, is not subject to any review for consistency with any of WSDOT standards and procedures, including basic questions like whether a valuation is required and the determination of highest and best use.

With respect to the nature of the City's approval, the City should consider issuing a Permit allowing a 20-foot wide point of access. ABS is proposing to use a City street for the same purpose for which ABS has an existing right. Under the Judgment, ABS already has a right to access NE 51st Street in a "reasonable" way. A wider point of access is still entirely consistent with the roadway's purpose, and with the flexibility of the "reasonable access" to the Property conveyed to ABS.⁵ A Permit specific to the proposed use would still allow the City (and WSDOT) to review a future change in use.

If the City decides that an easement is required, any limitation on the use of the easement should be drafted broadly enough to allow access for all activities reasonably related to use of the Property for a religious facility, including but not limited to meetings, office use, and community religious events like weddings. In addition, the easement should not impose any restrictions on ABS's current 14-foot point of access. The City should also separate the easement process from the approval of the site entitlement. The site entitlement approval can be granted with the requirement of a future easement agreement with ABS.

While we appreciate that the City cannot control all delays and complications that may arise, the City can use its discretionary powers to help mitigate the consequent impacts. Reducing the cost in this instance would not only work in our mutual interests toward a common end goal, as the City has expressed, but also engender in the process much-needed good will.

Thank you for your consideration.

Regards,



Ali Haveliwala

Board Member, Joint Secretary

⁵ A right of access described as reasonable allows for changes in the intensity of use over time consistent with allowed uses of the benefitted property. *See, e.g.*, 17 Wash. Prac., Real Estate § 2.9 (2d ed.) (broad easement language would allow "an easement that once served a single house on a large tract of land . . . to serve a subdivision)."