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

In the Matter of the Appeal of  
**Eugene Zakhareyev**  
of the June 12, 2018 approval  
Site Plan Entitlement (LAND-2013-00171)  
for the Anjuman-e-Burhani Mosque  
at 15252 NE 51<sup>st</sup> Street, Redmond

Appeal No. LAND-2018-00701  
**APPLICANT ANJUMAN-E-  
BURHANI'S POST-HEARING BRIEF**

**I. INTRODUCTION**

Applicant Anjuman-e-Burhani (“AEB”) hereby submits this post-hearing brief in support of affirmance of the Site Plan Entitlement Decision by the City of Redmond Technical Committee.

**II. STATEMENT OF FACTS**

**A. Anjuman-e-Burhani Seattle**

The applicant, Anjuman-e-Burhani Seattle (“AEB”), is a local organization dedicated to serving the spiritual needs of the Dawoodi Bohra community in this area. The Dawoodi Bohras are an extremely small sect of Shia Muslims, tracing their roots to the Fatimid Imams who ruled Egypt in the early 10th Century AD. There are approximately 1 million Dawoodi Bohras in the world, mostly in the Indian sub-continent; adherents also live in Africa, Australia, Europe, the Middle East, and the United States. There are approximately 5,000 to 6,000 Dawoodi Bohras in the entire United States, mostly concentrated in Los Angeles, Houston and Chicago. Testimony of Ali Haveliwala.

1 The first member of the Dawoodi Bohra community to settle in the Pacific Northwest  
2 arrived in the 1950's. Over the years the community's membership has fluctuated with economic  
3 conditions but has been relatively stable, with new members moving in as other members leave  
4 the area for economic opportunities elsewhere. Presently the local Dawoodi Bohra community  
5 consists of approximately 150 members, including children. Testimony of Ali Haveliwala.

6 The local Dawoodi Bohra community presently leases a multi-purpose space in an office  
7 park in Kirkland for worship and other religious activities. Ex. C-12 at 2-3.

### 8 **B. The Project Site**

9 In August 2010, AEB purchased two adjacent parcels in Redmond described as Tax  
10 Account Numbers 218250-0080-08 and 218250-0082-06. Ex. Z-17. The project site address is  
11 15252 NE 51st Street, Redmond. Ex. C-01 at 3. The site is located just east of the SR 520 right-  
12 of-way, directly across NE 51st Street from Microsoft Building 88. Ex. Z-04, Attachment A.

13 The two parcels form an irregularly-shaped site with five sides. Ex. C-08 at 5; Ex. Z-90.  
14 The north (rear) property line abuts residential lots bordering 154th Avenue NE. Id. The west  
15 property line abuts a sliver of Parcel 3882310140 (5215 154th Ave NE) and the SR 520 right-of-  
16 way. Id. The east property line abuts one large residential parcel. Id. The south (front) property  
17 line abuts NE 51st Street. Id. The southwest property line veers northwesterly away from NE  
18 51st Street, adjacent to undeveloped City of Redmond/WSDOT right-of-way. Id; see also Ex. Z-  
19 72. The project site is unique in that it does not have a significant street frontage. Ex. Z-44 at 9  
20 (Attachment 2 to DRB Staff Report).

21 The site is zoned R-5. Ex. C-03 at 5-7; Ex. C-01 at 4.

22 For many years prior to its purchase by AEB, the site was an overgrown, rat-infested  
23 eyesore, occupied by a dilapidated house, junk vehicles, garbage, and debris. A local resident  
24 who drives on NE 51st Street daily testified about personally observing the site's "decay" over  
25 many years. Testimony of Hans Gunderson. After AEB's purchase of the property, its members  
26

1 cleaned up the site, removing over 400 tons of garbage and numerous junk vehicles and  
2 appliances. Testimony of Ali Haveliwala.

3 Members of the City's Design Review Board observed that the project site "has been a  
4 dumping ground for many years" and described the site as "an eyesore of a location." Ex. Z-44  
5 (Attachment 3 to DRB Staff Report, 7/18/13 DRB meeting minutes at 9, 11). Junk vehicles and  
6 debris are visible in photos of the site. Ex. C-08 at 5, 7.

### 7 **C. The Anjuman-e-Burhani Seattle Mosque Project**

8 In 2012, AEB began conceptual planning for a two-story Mosque complex, containing  
9 worship areas, a multi-purpose community space, classrooms, offices, and a parsonage. Ex. Z-  
10 53. AEB initiated the City of Redmond pre-application process in January 2013. Ex. Z-43.

11 From the outset of the pre-application process, the project architects have explained the  
12 design and capacity of the worship areas in the context of the prayer rugs used by the Dawoodi  
13 Bohras:

14 During the preliminary development of the design, the standard used for sizing the  
15 Mosque was 13.5 square feet/worshiper. This is based upon an Anjuman E Burhani  
16 (AEB) Community standard prayer rug 2.5' x 4.0' per individual with 12" aisles between  
17 prayer rugs and 18" aisles at the sides and back of the layouts . . . .  
18 . . . . As opposed to the pew, bench or moveable chair seating, the AEB prayer rug is the  
19 relevant gauge for the defining area of the individual worshiper. The Mosque prayer  
20 space is not sized for seating but for the area of the prayer rug necessary for isolated and  
21 individual standing; moving to a prostrate or prayer position; and then finally to a  
22 meditative floor seated/kneeling position for sermons and readings, all within the area of  
23 the prayer rug necessary for an average sized person.

24 Ex. Z-43.

25 The prayer area (*Masjid*) consists of a main floor level with space for 81 worshippers, and  
26 an upper level with space for 66 worshippers, for a total capacity of 147 worshippers. Ex. C-06,  
27 Drawings A2.02 and A2.03.

28 The community gathering space (*Mawaid*) adjacent to the *Masjid* will be used for  
29 community events, including meetings, weddings and other special events, and communal meals.

1 | Testimony of Ali Haveliwala; Ex. C-06, Drawing A2.02. The second floor of the *Mawaid* will  
2 | contain classrooms for Saturday school, a library, and principal's office. Ex. C-06, Drawing  
3 | A2.03. The *Mawaid* building also contains a parsonage, consisting of a three-bedroom residence  
4 | connected by an elevator to guest quarters on the main floor. *Id.*, Drawing A2.02.

5 | AEB made its formal application for Site Plan Entitlement on February 13, 2014. Ex. C-  
6 | 03 at 4; Ex. C-01 at 3. The City gave the required public notice of the application on March 12,  
7 | 2014. Ex. C-03 at 4. Appellant Eugene Zakhareyev ("Appellant") became a party of record  
8 | during the City's type II review of the application. *See* RZC 21.78.P.

9 | **D. Public Involvement**

10 | AEB and the City provided numerous opportunities for neighboring property owners,  
11 | neighborhood residents, and members of the public to learn about the project, ask questions, and  
12 | express their opinions and concerns. AEB held an open house at the site. Testimony of Ali  
13 | Haveliwala. City staff conducted three neighborhood meetings regarding this project. Ex. C-09  
14 | at 1. At least one public meeting filled the City Council chambers. Testimony of Sarah Pyle.

15 | City staff also held private meetings with Appellant and responded to numerous emails  
16 | and letters from him. Exs. Z-75; Z-74; Z-73; Z-52; Z-47; Z-26.

17 | **E. The Design Review Process**

18 | The City's Design Review Board reviewed this project at three separate public meetings.  
19 | The first DRB meeting was held July 18, 2013. Ex. Z-44.

20 | The second DRB meeting was held August 22, 2013. Ex. Z-44. The minutes of that  
21 | meeting reflect that the DRB had "provided extensive feedback on the initial proposal" at the  
22 | July meeting, and that the applicant "has made several changes based on that feedback." *Id.*,  
23 | Attachment 3 (DRB 8/22/13 meeting minutes at 6).

24 | The third DRB meeting was held April 6, 2017. Ex. C-09. At that meeting, AEB  
25 | provided point-by-point responses to DRB concerns raised at the July and August 2013 meetings.  
26 |

1 Ex. Z-44, Attachment 2; Ex. C-07 (Design Standards Checklist) and Ex. C-08 (Design Review  
2 Submittal).

3 At its final meeting, the DRB heard comments from seven members of the public,  
4 including Appellant, and one representative of AEB. Ex. C-09 at 2-3. The DRB minutes do not  
5 reflect any comments by Tom Flick, owner of two parcels to the north of the project site.<sup>1</sup> Ex. C-  
6 09 at 2-3.

7 As the project progressed through the pre-application and design review process, AEB  
8 changed the project in several ways to respond to community concerns. Testimony of Sarah  
9 Pyle; Ex. Z-44; Ex. C-07; Ex. C-08.

10 Between the pre-application narrative submittal in January 2013 and the Design Review  
11 Board approval in April 2017, AEB reduced the total size of the project by approximately 10,000  
12 square feet. *Compare* Ex. Z-43 (total area of 32,678 square feet) *with* Ex. C-08 at 2 (total area of  
13 22,657 square feet). AEB also changed the landscape plan to add more trees to the outside  
14 perimeter of the property to mask views from the neighborhood. Ex. C-09 at 1.

15 AEB created a “break or a feature that distinguishes the main building elements,”  
16 including modulation on the north side of the building. Ex. Z-44, Att. 3 (DRB 8/22/13 meeting  
17 minutes at 6-7). AEB also responded to the DRB’s concerns regarding “the sightline of the roof  
18 deck into the back yards of neighboring properties to the north and east” by setting back the roof  
19 deck 20 feet from the edge of the building. *Id.* at 7. DRB member Krueger “appreciated the  
20 work done by the applicant to minimize impact to the neighbors to the north.” *Id.* at 8.

## 21 F. SEPA Review

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25 <sup>1</sup> At the hearing before the Examiner, Mr. Flick testified that he is concerned about the project’s bulk and  
26 scale and offered his opinion that the project is inappropriate because “it’s a mosque in a neighborhood.” Testimony  
of Tom Flick.

1 The City reviewed the project under the State Environmental Policy Act (SEPA), and  
2 issued a Determination of Non-Significance on March 9, 2017. Ex. C-03 at 5; Ex. C-18. The  
3 SEPA threshold determination was appealed by Appellant Zakhareyev and Susan Wilkins on  
4 April 7, 2017. Ms. Wilkins subsequently withdrew her SEPA appeal in a July 20, 2018 letter to  
5 the Office of the Hearing Examiner. On August 6, 2018, counsel for Appellant notified counsel  
6 for AEB and the City via email that Appellant was also withdrawing his SEPA appeal. On  
7 August 7, 2018, the Hearing Examiner issued an Order Acknowledging Withdrawal and  
8 Dismissing Appeal, dismissing Appeal No. LAND-2017-00348 (SEPA-2017-00172).

9 **G. The Technical Committee Decision**

10 The City conducted Type II review of the AEB Mosque project under RZC 21.76.0550,  
11 Table 21.76.050B.

12 During the process of the City's review, the Director of the Department of Planning and  
13 Community Development made two administrative interpretations of the Redmond Zoning Code  
14 provisions applicable to religious facilities in residential zones.<sup>2</sup> Exs. C-13, C-14. The Director  
15 determined that a uniform area permanently identified on the floor for placement of a prayer rug  
16 is the equivalent of a "fixed seat" for purposes of calculating seating capacity under RZC  
17 21.08.280.B where worshippers use prayer rugs instead of seats, benches, chairs, or other seating  
18 fixtures. Ex. C-13. The Director also determined that a parsonage is an accessory use to a place  
19 of worship permitted in a residential zone. Ex. C-14.

20 On June 12, 2018, the Technical Committee issued its Site Plan Entitlement decision  
21 ("Decision") approving the AEB Mosque project with conditions. Ex. C-03 at 4, 8-16.

22  
23  
24  
25 <sup>2</sup> These interpretations appear to have been initiated by City staff, as opposed to a public Request for Code  
26 Interpretation. A Request for Code Interpretation would have triggered the Type I process identified in RZC  
21.76.100.D.8.

1 According to the Staff Report, the City did not formally provide notice of the Decision until June  
2 13, 2018. Ex. C-01 at 7.

### 3 **H. Appellant's Appeal**

4 On June 27, 2018, Appellant filed his appeal of the Decision. Ex. C-02 at 2. Appellant  
5 asserted eleven separate errors or omissions by the City in approving the Site Plan Entitlement:

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

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23 <sup>3</sup> Numerous exhibits provided to the Hearing Examiner by the Appellant appear to relate exclusively or  
24 primarily to Issue No. 1, which was dismissed from this appeal by the Examiner on August 24, 2018. These include  
25 Exhibit Nos. Z-11 through Z-14, Z-18, and Z-23 through Z-29. Although AEB agreed at the hearing to the entry of  
26 all the parties' exhibits in the interest of efficiency, the Hearing Examiner should disregard exhibits relevant only to  
the dismissed Issue No. 1, as well as any attempts by the Appellant to resurrect that issue.

1 10) The City erred “by not incorporating any growth projections into its review process”;  
2 and

3 11) The City erred by failing to comply with transit-related setbacks under RZC  
4 21.28.030.

5 In response to motions to dismiss brought by the City and AEB, the Hearing Examiner  
6 dismissed Issues 1 and 2, ruling that “the only challenges properly included in these proceedings  
7 are those to RZC applicable provisions.” Ruling on City and Applicant Motions to Dismiss,  
8 August 24, 2018, at 1-2. The Examiner acknowledged that Appellant’s appeal document failed  
9 to identify RZC citations for Issues 6, 9, and 10, but allowed “challenge to the growth projections  
10 in the project’s traffic impact assessment” as arguably within a review of “the adequacy of the  
11 streets...in the area of the subject property to serve the anticipated demand from the proposal”  
12 under RZC 21.76.070.Y.1.d. *Id.* at 2-3.

### 13 III. ARGUMENT

#### 14 A. Standard and Scope of Review by the Hearing Examiner.

15 The Redmond Municipal Code circumscribes the Hearing Examiner’s review authority,  
16 limiting it to issues of compliance with the Redmond Zoning Code (RZC). RMC 4.28.010;  
17 RMC 4.28.020. In appellate review of a Type II decision such as site plan entitlement, the  
18 Examiner may grant an appeal only if the Examiner determines that the appellant has carried the  
19 burden of proving that the decision is not supported by a preponderance of the evidence or was  
20 clearly erroneous. RZC 21.76.060.I. To prevail in an appeal of a Type II Site Plan Entitlement  
21 decision, the appellant must show that the proposed project fails to satisfy applicable approval  
22 criteria for the Technical Committee’s decision. Those approval criteria are limited to  
23 compliance with SEPA and compliance with the RZC. RZC 21.76.070.Y.3. In this appeal, the  
24 only relevant review criteria are in the RZC, because Appellant has already voluntarily dismissed  
25 his SEPA appeal.  
26

1 The RZC requires the Examiner to accord substantial weight to the Technical  
2 Committee's decision in Type II decisions. RZC 21.76.060.I.4. In the context of according  
3 deference to administrative decisions, Washington courts have held that an agency's decisions  
4 will not be overturned unless evidence in the record shows the agency has "engaged in an  
5 unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; . .  
6 . [or] [t]he agency has erroneously interpreted or applied the law." *Bellevue Farm Owners Ass'n*  
7 *v. State of Washington Shoreline Hearings Bd.*, 100 Wn. App. 341, 363, 997 P.2d 380 (2000).

8 The Redmond Zoning Code requires an Appellant to demonstrate the decision is not  
9 supported by the preponderance of evidence or is clearly erroneous. Courts have held that an  
10 action is clearly erroneous when it leaves the reviewing [authority] with "the definite and firm  
11 conviction that a mistake has been committed." *Lakeside Indus. v. Thurston County*, 119 Wn.  
12 App. 886, 894, 83 P.3d 433 (2004). When applying the clearly erroneous standard, the Hearing  
13 Examiner must not substitute his or her own judgment for the judgment of the agency. *See*  
14 *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994).

15 The code administrator (in this case, the Director of Planning and Community  
16 Development) is responsible for interpretation of the RZC. RZC 21.76.100.D. The Hearing  
17 Examiner must accord substantial deference to the City's interpretation of its own ordinances.  
18 *Nw. Sportfishing Indus. Ass'n v. Washington Dep't of Ecology*, 172 Wn. App. 72, 288 P.3d 677  
19 (2012); *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180, 61 P.3d 332  
20 (2002). With regard to religious facilities such as the AEB mosque, "[i]n order to balance the  
21 need for conformity with local codes against the freedom of religion guaranteed in the state and  
22 federal constitutions, local governments have been directed to be flexible and creative when  
23 applying local zoning ordinances to [religious institutions]." *Timberlake Christian Fellowship*,  
24 114 Wn. App. at 185 (citing *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 9-10, 639 P.2d  
25 1358 (1982) ("[t]here should be some play in the joints of both the zoning ordinance and the  
26 building code.")).

1 In any appeal, the Hearing Examiner may only consider those issues raised in the  
2 Appellant's statement of appeal. See RZC 21.76.060.I.2.ii. The appellant, in turn, may only  
3 raise challenges that are within the scope of the decision appealed from -- in this case, the City's  
4 decision to grant AEB the Site Plan Entitlement.

5 **B. Under the Redmond Zoning Code the AEB Mosque is a Use Permitted Outright**  
6 **in the R-5 Zone.**

7 Pursuant to RZC 21.08.080.D "Allowed Uses" and Table 21.08.080C, a religious  
8 institution is an *outright permitted use* in an R-5 Single-Family Urban Residential zone, not  
9 requiring a Conditional Use Permit when there are fewer than 250 seats provided within the  
10 worship area.<sup>4</sup> The purpose of the R-5 Zone includes providing for residential neighborhoods  
11 "that have a full range of public services and facilities", and "[t]o complement the primarily  
12 residential nature of these zones, some nonresidential uses are allowed." RZC 21.08.080.A. For  
13 each allowed use, Table 21.08.080C sets out the unit of measure to be used in calculating the  
14 required minimum amount and maximum allowed amount of parking, as well as any special  
15 regulations applicable to that use. Table 21.08.080C.28 addresses parking requirements and  
16 special regulations for religious institutions.

17 RZC 21.08.280 further identifies requirements and criteria specific to "Churches,  
18 Temples, Synagogues, and Other Places of Worship." The "Purpose" section of RZC 21.08.280  
19 provides:

20 This section is intended to ensure that the unique impacts associated with church, temple,  
21 synagogue and mosque uses are addressed *while still allowing for a wide range of*  
22 *possible locations for religious assembly*

23 RZC 21.08.280.A (emphasis supplied). These Technical Committee properly applied these  
24 regulations and the regulations in RZC 21.08.080 to the AEB Mosque proposal.

25 <sup>4</sup> Although Appellant challenged the City's Site Plan Entitlement decision by arguing that a Conditional  
26 Use Permit should have been required in this case, the Hearing Examiner dismissed that issue (Issue No. 2) as  
outside the Examiner's jurisdiction. See Part II.H.

1           **C. The City Correctly Calculated the Required Parking for the AEB Mosque (Issue**  
2           **No. 3).**

3           RZC Table 21.08.080C governs parking in the R-5 zone and identifies a “Parking Ratio:  
4           unit of measure (minimum required; maximum allowed)” for each use. According to the table,  
5           the minimum parking ratio for religious institutions is one space for each “1,000 sq. ft. gfa for  
6           assembly” or one space for each “5 fixed seats.” The maximum amount of parking allowed is  
7           one space for each “3 seats.” *Id.* Thus, at a minimum, such institutions must provide one  
8           parking space per thousand square feet of gfa (gross floor area) for assembly, *or* one parking  
9           space per five “fixed seats.” The maximum allowed parking is one parking space per three  
10          “seats.” RZC Table 21.08.080.C.28. For all religious institutions, the use “shall comply with the  
11          parking regulations for assembly uses, except that in no event shall parking be in excess of one  
12          space per three seats in a residential zone.” RZC 21.08.280.C.2.

13          The RZC also has a specific code provision addressing calculation of seating capacity in  
14          “churches, temples, synagogues, and other places of worship.” RZC 21.08.280.B. However,  
15          RZC 21.08.280.B explicitly addresses only three “seating” categories: individual fixed seats;  
16          pews or benches; and general assembly areas with movable chairs or other portable seating  
17          fixtures. The RZC does not define the term “fixed seat”, nor does it explicitly address places of  
18          worship in which congregants use prayer rugs instead of seating fixtures.

19          In an Administrative Interpretation issued on April 29, 2015, the City specifically  
20          addressed calculation of seating capacity in the context of a mosque with prayer rugs,  
21          determining that for purposes of calculating seating capacity in a mosque, a uniform area with a  
22          fixed location on the floor is equivalent to an “individual fixed seat” under RZC 21.08.280.B.1.  
23          Ex. C-13; Decision (Ex. C-3) at 5; Ex. C-1 at 8-9. The interpretation noted that pursuant to RMC  
24          1.01.03.4, when a term is not defined in the code, it is to be “construed according to the context  
25          and approved usage of the language.” Ex. C-13. The interpretation is accordingly based on  
26          dictionary definitions of “fixed” and “seat.” *Id.* As explained above, the Director is charged

1 with interpreting the RZC, and the Hearing Examiner must defer to the City's interpretation of its  
2 own zoning code. RZC 21.76.100.D; *Timberlake Christian Fellowship*, 114 Wn. App. at 180.  
3 This is particularly true, where, as here, the interpretation requires the City to take into account  
4 the unique worship practices of a religious group, and particularly those of a religious minority.  
5 In its Administrative Interpretation and consequent calculation of seating capacity for the  
6 worship areas of the AEB Mosque the City did exactly what local governments have been  
7 "admonished by the Courts" to do: be flexible and creative when applying zoning code  
8 provisions to religious institutions due to the First Amendment religious freedom issues  
9 involved. *See Timberlake Christian Fellowship*, 114 Wn. App. at 181, 185.

10 The Technical Committee followed the Administrative Interpretation here, determining  
11 that the project has 147 fixed seats for purposes of compliance with the R-5 zone regulations.  
12 Decision (Ex. C-3) at 5-7; Staff Report (Ex. C-1) at 8-9; DRB Approval (Ex. Z-44); David Lee  
13 testimony; Sarah Pyle testimony. City staff based its "fixed seat" calculation on AEB's site plan  
14 entitlement application, which designated a main floor worship area of 1,599 sq. ft. with fixed  
15 locations for 81 prayer rugs; and an upper level worship area of 1,259 sq. ft. with fixed locations  
16 for 66 prayer rugs. Ex. C-1 at 8-9; C-5; Ex. C-3 at 5-7; Ex. C-6 at A2-02, A2-03; Sarah Pyle  
17 testimony; David Lee testimony. The mosque will thus have a total of 2,858 sq. ft. devoted to  
18 worship assembly, and a total of 147 fixed locations for prayer rugs. *Id.* During AEB prayers,  
19 the typically-sized 2'6" x 4'0" rugs are laid side by side uniformly in rows; the outline of each  
20 rug will be either printed into the design of the carpet or marked on the floor. Ali Haveliwala  
21 Testimony; Ex. C-1 at 9; Ex. A-2. AEB must permanently mark on the floor the outline of the  
22 prayer rugs in the configuration noted in its application site plans. Ex. C-1 at 9; Ex. C-6; Sarah  
23 Pyle testimony; Ali Haveliwala testimony.

24 At the 5:1 "fixed seat" ratio, AEB is required to provide a minimum of 29 parking spaces  
25 for 147 seats. RZC Table 21.08.080.C.28. At the 3:1 "seat" ratio for maximum allowable  
26 parking, the maximum amount of parking allowed onsite is 49 spaces. *Id.*; RZC 21.08.280.C.2.

1 The project as approved by the City will have 36 stalls on-site, over the minimum and under the  
2 maximum, therefore meeting the code. Ex. C-03 at 7. To address community concerns about  
3 parking impacts, space for an additional 29 valet-parked vehicles will be provided on site.<sup>5</sup> *Id.*

4 Appellant alleges that the City erred because it was required to calculate seating capacity  
5 pursuant to RZC 21.08.280.B.3, *i.e.*, by defining a “seat” as “seven square feet per person for the  
6 area seating the general assembly with movable chairs or other portable seating fixtures,” instead  
7 of taking into account the number of prayer rugs actually accommodated in the worship areas and  
8 treating that as equivalent to individual fixed seats under RZC 21.08.280.B.1. Ex. C-02 at 4. In  
9 his appeal, Appellant based this argument solely on the definition of “fixed seating” in the  
10 International Building Code (IBC). *Id.*<sup>6</sup> Appellant correctly notes that the IBC has been adopted  
11 by the City as its building code. *Id.* See RMC 15.08.020 (RMC Ch. 15.08 “Building Code”).  
12 However, the Site Plan Entitlement at issue here is a land use decision based on the City’s zoning  
13 code, not its building code. Ex. C-01 at 6, 8; David Lee Testimony. As such, the IBC definition  
14 of “fixed seating” is irrelevant to an interpretation of the RZC provisions on calculation of  
15 seating capacity in places for religious worship. *Id.*

16 Moreover, even if the Appellant were correct and a prayer rug cannot be considered a  
17 “fixed seat” under the RZC, then the minimum required parking would be calculated by using the  
18 alternate parking ratio of one parking space per thousand square feet of gfa (gross floor area) for  
19 assembly contained in RCZ Table 21.08.080.C.28 – not the seven square feet per person used by  
20 Appellant. At a total of 2,858 sq. ft. of assembly area, under the alternate 1:1,000 parking ratio

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23 <sup>5</sup> The staff report states that the 29 valet-parked spaces will be “off-site”; City staff explained at the hearing  
24 that this was an error and that the 29 valet parking spaces will be provided on-site. See Ex. C-1 at 9, 12; David Lee  
25 testimony. AEB will also provide off-site parking for an additional 30 vehicles in a nearby lot. Ex. C-08 at 26.

26 <sup>6</sup> “FIXED SEATING. Furniture or fixture designed and installed for the use of sitting and secured in place  
including bench-type seats and seats wit or without backs or arm rests.” Ex. C-02 at 4.

1 the AEB Mosque would require just 3 parking stalls, far exceeded by the 36 stalls provided.

2 Thus, under either approach, the mosque complies with the RZC's parking requirements.

3 Appellant incorrectly asserts – citing two traffic studies – that two previously-approved  
4 mosques (for MAPS and ICOR) used 7 square feet per worshipper to calculate seating capacity  
5 under RZC 21.08.280.B.3 and corresponding minimum parking requirements. In fact, the ICOR  
6 and MAPS traffic studies use the 5:1 “fixed seat” ratio, defining the “fixed seat” as an area of 2’  
7 6” x 3’ 6” – prayer rug dimensions slightly smaller than those used by the Dawoodi Bohra at the  
8 AEB mosque but larger than 7 square feet. Ex. Z-41 at 4; Ex. Z-42 at 1. The ICOR traffic study  
9 even includes a floor plan with the prayer rugs outlined. Ex. Z-42, Appendix A.<sup>7</sup>

10 Regardless of the method used by the City to calculate required parking at the ICOR and  
11 MAPS mosques, the hearing testimony established that those mosques were not approved as part  
12 of the Site Plan Entitlement process, and that the AEB mosque has been approved through a  
13 significantly different process than was used by the City for those previous projects. Sarah Pyle  
14 Testimony.

15 Appellant also implied at the hearing that because the word “mosque” appears in the RZC  
16 21.08.280.A purpose statement, the City somehow had prayer rugs in mind when it identified the  
17 three categories of “seating” used to define “a seat” in RZC 21.08.280.B. But as City staff  
18 pointed out at the hearing, the inclusion of the word “mosque” simply means that the City  
19 anticipated a mosque as an allowed use – not that it had pre-determined how a prayer rug would  
20 fit within the definition of a “seat.” Sarah Pyle Testimony.

21 Woven throughout Appellant's arguments is the implication that the City has somehow  
22 colluded with AEB in misrepresenting the capacity of the facility and intentionally understating  
23 the number of worshippers that will use the prayer area. *See* hearing cross-examinations of Sarah  
24

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25 <sup>7</sup> Appellant's Exhibit Z-41, the MAPS traffic study, does not include a floor plan.  
26

1 Pyle; David Lee; and Ali Haveliwala. Appellant, however, has presented no evidence to support  
2 this insinuation. Appellant has failed entirely to meet his burden of showing that the City erred  
3 in calculating the required minimum parking for the AEB mosque.

4 **D. The City Correctly Calculated the Required Setbacks for the AEB Mosque**  
5 **(Issue No. 4).**

6 RZC 21.08.280.D.1 sets out the development criteria for places of worship. All religious  
7 institutions must maintain a minimum setback of 20 feet from all property lines, to be increased  
8 by five feet for every one foot in building height over 30 feet; and a maximum building height  
9 not to exceed 50 feet inclusive of steeples, bell towers, crosses, or other symbolic religious icons.  
10 RZC 21.08.280.D.1.c, d. City staff interpreted this as creating a sloping, three-dimensional  
11 setback, in which the lower 30 feet of a building must be set back 20 feet from property lines,  
12 and each additional vertical foot of the building must be set back five more feet from property  
13 lines. Ex. C-1 at 10-11; Ex. Z-44; David Lee testimony; Sarah Pyle testimony. These setback  
14 requirements are met by the AEB mosque, as the outer walls of the bulk of the building, which is  
15 less than 30 feet in height, are set back at least 20' from the property line. *Id*; Ex. C-06 at A1.03.  
16 Those portions of the building taller than 30' respect the sloping, 5 over 1 setback. *Id*. The  
17 overall height of the mosque, including the minaret, is 45' tall – under the 50' maximum. Ex. C-  
18 1 at 11; Ex. C-8; Sarah Pyle Testimony.

19 As City staff explained to the Design Review Board on July 18, 2013:

20 One of the unique things about religious facilities is that they have an expanded setback.  
21 A single family home could be built at 35 feet high in a residential zone, but the height  
22 requirements for religious facilities are different. The height limit starts out lower, and  
23 for every five feet the design steps into the setback, the structure can go up another foot,  
24 up to a maximum of 50 feet, which would include a steeple or bell tower.

25 Ex. Z-44 (7/13/13 DRB minutes at 6). The DRB never expressed any objections to the City's  
26 interpretation of the religious institution setback requirements. Ex. Z-44. This is the consistent  
manner in which such tiered or three-dimensional setback requirements have been interpreted by  
the City. Sarah Pyle testimony.

1 Citing the RZC definitions for “setback” and “setback line”, Appellant asserts that the  
2 RZC establishes a two-dimensional “building envelope” setback, requiring *the entire building*  
3 *footprint* to be set back five additional feet for every one foot of added building height. Ex. C-  
4 02 at 5. However, neither of the cited definitions mentions measurement from the “building  
5 envelope.” Ex. C-1 at 11. Further, as City staff have pointed out, the “setback line” definition  
6 states that structures above 30” in a setback may be permitted if specifically allowed within the  
7 code. *Id.*

8 Most importantly, the Appellant’s interpretation of RZC 21.08.280.D.1.c and d would  
9 lead to absurd results. Including statutory and religious icons, RZC 21.08.280D.1.d allows  
10 religious buildings to be up to 50’ in height, anticipating symbolic religious icons to be placed on  
11 top of buildings, but limiting their height to 50’ above grade. If Appellant’s interpretation of the  
12 setback requirement were correct, an entire building with a religious icon reaching 50’ high  
13 would have to be set back 120’ from all property lines. Dependent on lot size, this could require  
14 that unlike other uses allowed in an R-5 zone, a religious institution would be required to devote  
15 the vast majority of its lot to setbacks. Such an interpretation of the code would be directly  
16 contrary to the stated purpose of RZC 21.08.280 as “allowing for a wide range of possible  
17 locations for religious assembly.” RZC 21.08.280.A. Appellant has failed to meet his burden of  
18 showing that the City erred in calculating the required setbacks for the AEB mosque.

19 **E. The City Correctly Calculated the Required Parking Under RZC 21.08.280.C.2**  
20 **(Issue No. 5).**

21 RZC 21.08.280.C.2 states that “[t]he following development criteria shall apply to places  
22 of worship and related activities. . . [t]he use shall comply with the parking regulations *for*  
23 *assembly uses*, except that in no event shall parking be in excess of one space per three seats in a  
24 residential zone.” RZC 21.08.280.C.2 (emphasis supplied.) Pointing to an unidentified section  
25 of the International Building Code, Appellant asserts that “assembly uses” under the IBC include  
26 community halls, community indoor recreation, and arts, entertainment and recreation facilities.

1 Ex. C-02 at 5-6. From this, Appellant argues that the City should have calculated required  
2 parking for the mosque using the parking ratios for *those* allowed uses, which is “adequate to  
3 accommodate peak use.” *See, e.g.*, RZC Table 21.08.080C.18, 20. Appellant’s argument is  
4 strained and illogical.

5 First, the argument is based on an unspecified section of the IBC, which is relevant only  
6 to interpretation of a *building* code – not the *zoning* code at issue here. Ex. C-01 at 6, 12.

7 Second, Appellant’s interpretation of the RZC would ignore the parking ratio specifically set out  
8 for religious institution uses in RZC Table 21.08.080C.28. The reference to “the parking  
9 regulations for assembly uses” in RZC 21.08.280.C.2 is an obvious reference to RZC  
10 21.08.080.C.28, which has an explicit parking ratio for gross floor area for “assembly” for  
11 religious institutions. Unlike the parking ratio provisions for the non-religious uses referenced  
12 by Appellant, RZC 21.08.080.C.28 says nothing about basing parking requirements on “peak  
13 use.” Basing parking requirements for a religious institution on “peak use” would also ignore the  
14 maximum parking limitation of one parking space per three seats – regardless of peak use -- set  
15 out in both RZC 21.08.080.C.28 and RZC 21.08.280.C.2.

16 RZC 21.08.280.C.5, requiring City approval of a traffic mitigation plan, specifically  
17 ensures that parking associated with the “peak” use of a religious institution will be taken into  
18 account. The plan must address “the mitigation of *overflow parking into adjoining residential*  
19 *areas.*” RZC 21.08.280.C.5 (emphasis supplied). This code section also acknowledges the  
20 maximum on-site parking space limit, stating that “[i]n addition to on-site parking requirements,  
21 *parking in excess of the maximum may be permitted on existing off-site satellite parking lots,*  
22 *subject to City approval of a joint use agreement.*” *Id.* (emphasis supplied). RZC 21.08.280.C.5  
23 assumes that accommodation of a religious facility’s peak use will involve parking off-site,  
24 beyond the required on-site parking. If Appellant’s interpretation of RZC 21.08.280.C.2 were  
25 correct, RZC 21.08.280.C.5 would be superfluous, because all peak use would already be  
26 *required* to be accommodated *on-site*.

1 In fact, as set forth in RZC 21.08.280C.5, AEB is required to submit a final  
2 Transportation Management Program for approval by the City prior to civil construction drawing  
3 approval. Decision (Ex. C-03) at 15; David Lee Testimony; Sarah Pyle Testimony. That plan  
4 will include the commitment made by AEB to provide 36 on-site stalls, an additional 29 spaces  
5 for valet parking on-site, and an agreement to use an off-site parking lot for 30 additional spaces  
6 for special events.<sup>8</sup> Ex. C-08 at 26.

7 Separate areas of the AEB facility will not be used simultaneously. That is, when prayer  
8 is taking place in the worship area, the multi-purpose room is not in use and thus will not  
9 generate parking demand on its own. Ali Haveliwala Testimony; Ex. C-01 at 12.

10 Finally, the AEB mosque will generate very little “peak” or “special event” parking  
11 needs. Special events are infrequent. Ali Haveliwala Testimony. For example, in the past 15  
12 years members of the AEB community have celebrated only four weddings and only five  
13 *misaaqs* (akin to a Bar/Bat Mitzvah) locally, as many congregants choose to travel to India for  
14 such celebrations. *Id.* Weddings are invitation based, and typically do not involve all members  
15 of the community. *Id.*

16 As with Issue No. 3, Appellant has failed to meet his burden of showing that the City  
17 erred in calculating the required parking for the AEB mosque.

18 **F. The City Did Not Err in Reviewing Traffic Impacts or the Capacity of Streets to**  
19 **Serve the Anticipated Demand from the Project (Issue No. 6).**

20 The Appellant offered testimony by residents in the neighborhood about traffic  
21 congestion. Gunderson Testimony; Zakhareyev Testimony. The Appellant also offered expert  
22 testimony by a transportation engineer who apparently had not visited the site until lunchtime on  
23 the day of the Hearing Examiner hearing. William Popp Testimony. Mr. Popp nit-picked the

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24 <sup>8</sup> Contrary to Appellant’s assertions, on-site valet parking is not being used to “substitute” for required  
25 parking stalls. As set forth above, the AEB mosque requires a minimum of 29 on-site stalls. The approved plans  
26 include 36 such stalls; the on-site valet parking will be in addition to the stalls required by RZC 21.08.080.C.28.

1 applicant's traffic impact analysis in several respects, under the mistaken impression that the  
2 Hearing Examiner was conducting a hearing on a SEPA appeal. *Id.* Significantly, Mr. Popp did  
3 not testify that the streets in the area of the project site are inadequate to serve the anticipated  
4 traffic demand from the project. *Id.*

5 By contrast, the Applicant's expert witness, transportation engineer Victor Salemann,  
6 testified that in his professional opinion the area streets are adequate to serve the anticipated  
7 demand from the AEB Mosque. Victor Salemann Testimony. For purposes of the traffic impact  
8 analysis, the Applicant's transportation engineering consultant assumed a 5 percent growth rate.  
9 *Id.* This growth rate assumption is conservative, in that the congregation's growth has been very  
10 slow or stable. Ali Haveliwala Testimony.

11 The City of Redmond has planned significant improvements that will increase the  
12 capacity and safety of NE 51<sup>st</sup> Street in the immediate vicinity of the AEB Mosque. Min Luo  
13 Testimony; Victor Salemann Testimony; Ex. Z-04, Attachment B. The record contains two  
14 detailed technical memoranda on NE 51<sup>st</sup> Street operations and improvements, prepared by  
15 transportation engineering consultant TENW on behalf of Microsoft. Exs. Z-04, Z-06. Concerns  
16 expressed by WSDOT earlier in the project review process regarding traffic impacts of the  
17 project have been resolved. Min Luo Testimony; Victor Salemann Testimony.

18 Testimony by neighboring property owners and residents about traffic congestion,  
19 perceived dangers of U-turns or left turns, or parking overflow do not contradict this evidence.  
20 Such generalized community complaints or fears cannot be the basis for a permit denial; while  
21 the opposition of the community may be given substantial weight, it cannot alone justify a local  
22 land use decision. *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 797,  
23 903 P.2d 986 (1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d  
24 985 (1990).

25 The Washington Supreme Court has specifically rejected the denial of a permit for a  
26 religious institution in a residential zone based on testimony from neighboring property owners

1 that the church might result in traffic congestion. *State ex. rel. Wenatchee Congregation of*  
2 *Jehovah's Witnesses v. City of Wenatchee*, 50 Wn.2d 378, 384-86, 312 P.2d 195 (1957). As the  
3 Court stated:

4 [I]t is rarely, if ever, that people entering or leaving a church cause or contribute to traffic  
5 accidents. It would seem reasonable to assume that if regulation is necessary in the  
6 interest of the safety, convenience and welfare of the general public, that should be  
7 regulated which has a direct effect upon the general welfare. This can be, and is, done  
8 generally by traffic police, signs and other reasonable regulations imposed alike upon all  
9 persons using the streets in the vicinity of churches, without undue interference with the  
10 right of worship and free assembly.

11 . . . .  
12 The contention that people congregating for religious purposes cause such congestion as  
13 to create a traffic hazard has very little in substance to support it.

14 *Id.* at 385-86.

15 The Appellants has failed to meet his burden of showing that the streets in the area are  
16 inadequate to serve the anticipated demand from the AEB Mosque.

17 **G. The City Correctly Approved the Parsonage "Guest Apartment" as within the**  
18 **AEB Mosque's Allowed Use (Issue No. 7).**

19 The AEB mosque will include a two-story split-level parsonage for use by its pastor and  
20 his family. *See* Ex. C-06 at A2.02, A2.03. The Director's Administrative Interpretation of RZC  
21 21.08.280 provides that "a parsonage is considered an accessory use to a permitted place of  
22 worship within a residential zone." Ex. C-14. The interpretation is based on the "purpose"  
23 definition of RZC 21.08.280, along with the RZC definition of "accessory use" in RZC 21.78A.  
24 Ex. C-14, Ex. C-1 at 15-16.

25 Appellant does not challenge the inclusion of the parsonage in the AEB approved plans.  
26 Ex. C-02 at 7. Instead, he asserts, in one conclusory sentence in his appeal application, that the  
parsonage's lower level "guest apartment" "is not an allowed use in the R-5 zone per RZC  
21.08.080, and it is not a common accessory use to religious facilities." *Id.* His pre-hearing brief

1 contains nothing more than the same conclusory sentence. He presented no evidence at the  
2 hearing to support his argument.

3 The RZC defines “Dwelling Unit” as follows:

4 A single unit providing complete, independent living facilities for not more than one  
5 family and permitted roomers and boarders, including permanent provisions for living,  
6 sleeping, eating, cooking and sanitation. . . .

7 RZC 21.78D. The upper floor of the parsonage contains a combined living room and kitchen,  
8 three bedrooms, and two bathrooms. Ex. C-06 at A2.03. The lower floor consists of a second  
9 living room, bedroom, and bathroom. *Id.* at A2.02. The parsonage contains just one kitchen  
10 area, on the upper floor, which qualifies both levels as one “dwelling unit.” Ex. C-01 at 15.

11 AEB intends to occasionally use the lower floor to accommodate visiting spiritual leaders. Ali  
12 Haveliwala Testimony. This use will consist of approximately zero to two visitors a year, for  
13 visits of approximately one to two weeks total. *Id.* This use is entirely within the scope of the  
14 parsonage “accessory use.”<sup>9</sup>

15 The City’s approach here is consistent with zoning regulations all over the country:

16 In a majority of jurisdictions, established churches are permitted to maintain wide-ranging  
17 uses accessory to their churches. Various parochial and community functions such as  
18 schools, playgrounds, day care centers, drug rehabilitation centers and softball fields have  
19 been found to be permitted in residential neighborhoods as accessory uses.

20 *City of Minneapolis v. Church Universal and Triumphant*, 339 N.W.2d 880, 889 (Minn. 1983).

21 Appellant has put forth no rationale why the RZC definition of “accessory use” should not  
22 similarly be interpreted broadly enough to include guest quarters for visiting dignitaries in the  
23 AEB parsonage.

24 <sup>9</sup> The Staff Report suggested that the parsonage “guest apartment” could also be considered an Accessory  
25 Dwelling Unit (ADU) under RZC 21.08.220. Ex. C-01 at 16. City staff clarified at the hearing that neither the  
26 parsonage nor its lower floor guest quarters are required to meet the RZC requirements for an ADU. David Lee  
Testimony.

1 Moreover, constitutional protections for the free exercise of religion are not limited to  
2 houses of worship; they extend to church facilities intimately associated with the church's  
3 religious mission. *Munns v. Martin*, 131 Wn.2d 192, 205, 930 P.2d 318 (1997) (free exercise of  
4 religion protection for Catholic church extended to proposed pastoral center even though center  
5 would not be used for worship services; court held that it was enough that the center would be  
6 used for church purposes).

7 The Appellant has failed to meet his burden of establishing that the Technical Committee  
8 committed clear error in allowing guest quarters as part of the accessory parsonage in the AEB  
9 Mosque.

10 **H. The City Correctly Applied the City's Design Standards in Approving the**  
11 **AEB Mosque (Issue No. 8).**

12 Site Plan Entitlements must be reviewed against the City's design standards in RZC  
13 Article III "Design Standards." (RZC Ch. 21.60 Citywide Design Standards). RZC 21.76.020.E.  
14 The City uses a Design Standards Checklist to demonstrate compliance with the City's design  
15 standards, identify critical project design issues, and note how those issues have been addressed.  
16 See Ex. C-07; Ex. C-01 at 16-17. The design is reviewed by the Design Review Board (DRB),  
17 which reviews the project in the context of the project's neighborhood.

18 Following consideration at three different DRB meetings, the DRB correctly found that  
19 the ABE project met the intent of the Design Standards. Ex. C-09. Contrary to Appellant's  
20 assertions, the design review appropriately considered the project's scale, bulk, and surrounding  
21 neighborhood.

22 As the Staff presentation to the DRB made clear, many of the design choices for the  
23 mosque were dictated by the Dawoodi Bohras' religion. For example, the *Masjid* or worship  
24 area is oriented precisely to Mecca. Ex. Z-44 (Responses provided for the DRB meeting held on  
25 July 18, 2013, at 21.60.040 Design Concepts (Buildings) B.1 (Architectural Concepts)). The  
26 mosque requires separate worship areas for men and women. Ex. Z-44, 7/18/13 DRB Minutes at

1 7. The placement of the minaret is specific to the religion. *Id.* The exterior color and materials  
2 of the mosque are also dictated by religious tenets calling for simple sand or white colors to be  
3 used for the exterior. *Id.* In general, the design of the AEB mosque was subject not only to DRB  
4 approval but also certification by the heads of the religious community in Mumbai, India. *Id.*

5 Washington state courts have held, in the context of cases regarding the burden on the  
6 free exercise of religion posed by landmarks preservation ordinances, that a religious building  
7 itself is an expression of that religion's belief, and that conveying religious beliefs is part of the  
8 building's function. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 217,  
9 840 P.2d 174 (1992) ("*First Covenant II*") ("the relationship between theological doctrine and  
10 architectural design is well recognized"; when the design of a religious facility is " 'freighted  
11 with religious meaning' " that would be understood by those who view it, then the regulation of  
12 the church's exterior impermissibly infringes on the religious organization's right to free exercise  
13 and free speech.")

14 AEB is not suggesting that it is unconstitutional for a local government to require that a  
15 religious institution comply with design principles contained in a zoning code. *See, e.g.*  
16 *Timberlake Christian Fellowship*, 114 Wn. App. at 186 (upholding approval of conditional use  
17 permit for church including number of conditions designed to mitigate the visual impact of the  
18 church on the neighborhood). However, here the Appellant is urging denial of approval of a  
19 religious institution – an allowed use in a residential zone –on the ground that the institution will  
20 appear aesthetically different from neighborhood residences. Such a denial would impermissibly  
21 infringe on constitutional rights. *See Wash. Const. Art I, § 11; U.S. Const. Amend. I. See also*  
22 *Religious Land Use and Institutional Persons Act of 2000 (RLUIPA)*, 42 U.S.C. § 2000cc-  
23 2000cc5.

24 The RZC specifically identifies religious facilities as an allowed use in an R-5 residential  
25 zone, even though by their very nature religious buildings typically do not look like single family  
26 homes. The code anticipates that religious facilities will be larger than adjacent single family

1 homes, allowing religious facilities to be 50 feet tall as opposed to the 35 foot height restrictions  
2 on single family residences; and as described above, specifying setbacks different from those  
3 required for single family homes. RZC 21.08.280. The design standards do not require that new  
4 buildings – religious or otherwise – literally match the scale of existing structures in the  
5 neighborhood. The City’s design standards, together with required review and approval by the  
6 DRB, are intended to ensure that strategies are employed to minimize the apparent scale of larger  
7 buildings such as religious facilities so that they fit in better with the existing neighborhood.

8 For example, RZC 21.60.040.B.2.a.iii establishes the intent of the “Building Scale”  
9 design standard to ensure that large buildings “reduce their *apparent* mass and bulk on the  
10 elevations visible from streets or pedestrian routes.” RZC 21.60.040.B.2.a.iii (emphasis  
11 supplied). The design standards then set out several strategies by which the “apparent mass and  
12 scale of large buildings” may be reduced, such as modulation and articulation, including the use  
13 of landscaping, varied materials, upper story setback, and small-scale additions. RZC  
14 21.60.040.B.2.b. Through the process of the AEB mosque design review and eventual DRB  
15 approval, the DRB ensured that the mosque employed exactly these strategies. Exhibit Z-44, the  
16 April 6, 2017 memorandum to the DRB by City planner Sarah Pyle, specifically addresses  
17 relevant Comprehensive Plan policies and applicable zoning requirements and contains detailed  
18 responses from AEB and its architects to issues and concerns raised by the DRB, organized by  
19 citation to the design standards.

20 Under “21.60.020 Context, Circulation and Connections B. Design Context” and “D.  
21 Relationship to Adjacent Properties”, AEB noted that although the mosque is a religious  
22 institution in a residential neighborhood, it sits on the edge of the residential community and  
23 serves as a transition to the more commercial Microsoft buildings across SR520 and NE 51<sup>st</sup>  
24 street. The project site shares a boundary line with only two residential sites. Ex. Z-44.

25 The scale of Microsoft Building 88, directly across NE 51<sup>st</sup> Street from the project site, is  
26 much larger than the scale of the project. Ex. Z-04, Attachment A.

1 Under "21.60.040 Design Concepts B2. Building Scale," AEB addressed how the scale of  
2 the mosque fits into the neighborhood through modulation, breaking the building into  
3 components, adding visual interest to the skyline, and having only two of the three levels visible  
4 from the neighborhood. Ex. Z-44. Throughout the DRB process, AEB made changes to the  
5 design of the building based on comments and concerns from members of the DRB. See Ex. Z-  
6 44, 8/22/13 meeting minutes attachment ("At the last pre-application meeting in July, the DRB  
7 provided extensive feedback on the initial proposal. The applicant has made several changes  
8 based on that feedback"); Sarah Pyle Testimony. Among other things, the plans were changed so  
9 that the roof deck would not allow a direct line of sight into neighboring properties, new  
10 landscaping was added, the design was modulated by adding a courtyard, windows were added to  
11 avoid a utilitarian institutional feel, and exterior color and materials were changed. Ex. Z-44;  
12 Sarah Pyle testimony; Ex. C-08.

13 Appellant attended at least one of the DRB meetings, and failed to introduce any evidence  
14 before the hearing examiner that the DRB process was flawed, or that the DRB did not  
15 appropriately consider scale, bulk, and neighborhood character. Ex. C-09 at 2; Eugene  
16 Zakhareyev Testimony. Testimony from a neighboring property owner that the appearance of the  
17 mosque "does not fit any house in the neighborhood", will be visible "from everywhere", and  
18 uses stucco rather than the exterior materials used on some neighborhood homes (see Tom Flick  
19 Testimony) does not justify overturning the City's approval of the Site Plan Entitlement.

20 Appellants has failed to meet his burden of establishing that the Technical Committee  
21 committed clear error in approving the project design.

22 **I. The City Did Not Err in Failing to Impose Traffic and Parking Conditions Based**  
23 **on Overall Building Capacity (Issue No. 9)**

24 As with Issue No. 6, Issue No. 9 amounts to a claim that streets in the area of the subject  
25 property are inadequate to serve the anticipated demand from the proposal. Ruling on City and  
26 Applicant Motions to Dismiss at 2-3. Appellant's contentions are at odds with the evidence.

1 Uses of the different portions of the facility, for example the *Masjid* and the *Mawaid*  
2 multi-purpose room, do not overlap. Ali Haveliwala Testimony.

3 The Applicant's transportation engineering consultants calculated trip generation based  
4 on mosque seating capacity. Victor Salemann Testimony. This is consistent with the City's  
5 requirements for traffic impact analysis. Min Luo Testimony; Ex. C-19. Trip generation based  
6 on special community events was also considered. Victor Salemann Testimony.

7 There is no requirement in the RZC to impose conditions for assumed impacts based on  
8 entire building square footage. Even if there were such a requirement, applying the required  
9 parking ratio for the gross floor area of the entire project (instead of just the gross floor area for  
10 religious assembly) would result in a minimum parking requirement of only 23 spaces (22,657  
11 square feet divided by 1,000). See RZC Table 21.08.080C.

12 The Appellant has failed to meet his burden of establishing that the impacts of the project  
13 were understated such that the streets in the area would be inadequate to serve the demand from  
14 the project.

15 **J. The City – Appropriately and Constitutionally – Did Not Limit the Growth of**  
16 **the AEB Congregation (Issue No. 10)**

17 As with Issue Nos. 6 and 9, under this Examiner's Ruling on City and Applicant Motions  
18 to Dismiss, this issue is characterized as a claim that streets in the area of the project are  
19 inadequate to serve anticipated demand.

20 No RZC provision requires growth projections for membership in religious institutions.  
21 The Technical Committee's Decision limits seating capacity in the worship area to 150; City staff  
22 testified that this was intended to be a limit of 147 seats. Sarah Pyle Testimony; David Lee  
23 Testimony. This limit is on seating capacity, not membership in the congregation. David Lee  
24 Testimony.

25 The traffic impact analysis assumed a 5% growth rate. Victor Salemann Testimony; Ex.  
26 Z-86 at 2. Even if a growth rate higher than 5 percent were assumed, there is no evidence that

1 streets in the area of the subject property are inadequate to serve demand from the project. Exs.  
2 Z-04 and Z-06; Victor Salemann Testimony.

3 Appellant contends, without any basis in fact, that the approved seating capacity “allows  
4 for no growth whatsoever,” and that the project is “already over capacity.” Ex. C-02 at 8. As  
5 AEB member Ali Haveliwala pointed out, it would defeat the entire purpose of this project for  
6 AEB to have undersized its worship facility. This facility is intended to serve the needs of this  
7 community for many years. Ali Haveliwala Testimony.

8 Appellant’s proffered condition (“to limit the congregation to the current number and  
9 prohibit expansion”) (Ex. C-02 at 8) is simply offensive. Conditioning Site Plan Entitlement  
10 approval on a limitation of the AEB congregation to its current number and prohibiting  
11 expansion of that number would be blatantly unconstitutional. Governmental action regulating  
12 land use and development may not infringe upon the free exercise of religion. Wash. Const. Art.  
13 I, § 11; U.S. Const. Amend. I. Our state constitutional provision on freedom of religion  
14 “absolutely protects the free exercise of religion, [and] extends broader protection than the first  
15 amendment to the federal constitution.” *City of Woodinville v. Northshore United Church of*  
16 *Christ*, 166 Wn.2d 633, 642, 211 P.3d 406 (2009) (citing *First Covenant II*, 120 Wn.2d at 229-  
17 30).

18 The test for whether a governmental action infringes on the right to freely exercise  
19 religious practices has three parts: (1) whether the party claiming an infringement has a sincere  
20 religious belief; (2) whether the governmental action burdens the free exercise of a religious  
21 practice; and (3) if so, whether the burden is offset by a compelling state interest. *North Pacific*  
22 *Union Conference Ass’n of Seventh Day Adventists v. Clark County*, 118 Wn. App. 22, 31-32, 74  
23 P.3d 140 (2003).

24 The sincere religious belief of the members of the AEB community is obvious. Ali  
25 Haveliwala Testimony. Government burdens religious exercise “[i]f the coercive effect of [an]  
26 enactment operates against a party ‘in the practice of his religion . . .’ ” *First Covenant II*, 120

1 Wn.2d at 226. *See e.g., City of Woodinville*, 166 Wn.2d 633 (six month moratorium on land use  
2 permit applications preventing creation of a tent city on church property constituted  
3 impermissible burden on the free exercise of religion); *Munns v. Martin*, 131 Wn.2d 192, 930  
4 P.2d 318 (1997) (potential 14-month delay in permitting new pastoral center due to historic  
5 preservation ordinance was unconstitutional burden); *First United Methodist Church of Seattle v.*  
6 *Hearing Examiner for Seattle Landmarks Preservation Bd.*, 129 Wn. 2d 238, 916 P.2d 374  
7 (1997) (landmark designation that would reduce the value of church property by half held  
8 unconstitutional).

9 A land use condition explicitly limiting the growth of a congregation would obviously  
10 place a substantial burden on that congregation's free exercise of its religion and would serve no  
11 compelling state interest. The Site Plan Entitlement is conditioned on limiting the worship area  
12 to a capacity of 150 fixed seats. It is extremely unlikely that the AEB congregation will grow to  
13 require a larger worship area. Ali Haveliwala Testimony. However, in the unlikely event that  
14 the congregation were to increase its membership to the point that it required a larger worship  
15 area, it would be required to go back to the City for further land use approvals.

16 The Appellant has failed to meet his burden of establishing that an unconstitutional  
17 limitation on membership growth is necessary to ensure the adequacy of streets in the area to  
18 accommodate the demand from this project.

19 **K. The City Did Not Err by Failing to Comply with Transit-Related Setback Rules**  
20 **(Issue No. 11)**

21 The final strand of spaghetti Appellant has thrown at the wall is an alleged violation of  
22 RZC 21.28.020. The transit-related building setback codified in the RZC does not affect the  
23 project site for the AEB Mosque; the setback line is well to the west of the property within the  
24 WSDOT right-of-way. Ex. Z-76, Map 11. See also RZC Figure 21.28.020B.

25 Sound Transit's potential temporary construction easements or permanent easements for  
26 vegetation trimming, drainage, etc., are not incorporated into the setbacks required under RZC

1 Chapter 21.28. Consequently, the Appellant has proceeded as if recent Sound Transit plans for  
2 construction easements amount to a codified transit setback line.

3 At the hearing, during direct examination of City Planner David Lee, counsel for the  
4 Appellant referred to Sound Transit's plans for a "take" of AEB property and asked if "some  
5 substantial portion" on the west side of the AEB project "will be acquired" by Sound Transit.  
6 Mr. Lee responded "that's a potential," but later clarified that he can't really offer an opinion on  
7 the extent or effect of any Sound Transit acquisition until plans are finalized. David Lee  
8 Testimony.

9 Ex. Z-97, a Sound Transit resolution dated May 24, 2018, contemplates various types of  
10 acquisition (partial fee acquisition; temporary construction easement; or permanent easement)  
11 along the route of the Downtown Redmond Link Extension. Sound Transit has identified at this  
12 point only a temporary construction easement of 2,091 square feet and a small permanent  
13 easement of 718 square feet for noise wall, drainage, and tree and vegetation trimming over the  
14 AEB property. Ex. C-16. The location of these easements, in the southwest corner of the site,  
15 would not affect any structures; the approved site development in this location is primarily  
16 landscaping. Ex. C-08 at 11.

17 Recently, Sound Transit posted to its website a SEPA Addendum, dated August 2018  
18 with Appendix I, Potentially Affected Parcels for the Proposed Design Refinements. This newly-  
19 issued Appendix I amends Appendix G1 from the 2011 East Link Final Environmental Impact  
20 Statement (Final EIS). AEB's parcel, RL107, is not identified as a potentially affected parcel.  
21 See Downtown Redmond Link Extension SEPA Addendum, Appendix I, Table I-1 and Figure I-  
22 1 (available at [https://www.soundtransit.org/Projects-and-Plans/downtown-redmond-link-  
23 extension/Downtown-Redmond-Link-Extension-document-archive/2018-Downtown-Redmond-  
24 Link-Extension-SEPA-Addendum-to-Final-EIS-documents](https://www.soundtransit.org/Projects-and-Plans/downtown-redmond-link-extension/Downtown-Redmond-Link-Extension-document-archive/2018-Downtown-Redmond-Link-Extension-SEPA-Addendum-to-Final-EIS-documents)). AEB respectfully requests that the  
25 Examiner either take official notice of Appendix I (attached) or admit it as an additional exhibit.  
26

1 AEB's property is not being "taken" or "acquired" by Sound Transit, contrary to  
2 Appellant's counsel's suggestion at the hearing. City staff will take into account the effect of any  
3 easements during review of civil construction drawings. Sarah Pyle Testimony.

4 Appellant has not met his burden of establishing that the City failed to comply with RZC  
5 chapter 21.28.

#### 6 IV. CONCLUSION

7 For the foregoing reasons, the Applicant respectfully requests that the Hearing Examiner  
8 deny the Appellant's appeal and affirm the Technical Committee's Decision approving Site Plan  
9 Entitlement.

10 Respectfully submitted this 17<sup>th</sup> day of September, 2018.

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# DOWNTOWN REDMOND LINK EXTENSION

## 2018 SEPA Addendum to the East Link Project Final Environmental Impact Statement



AUGUST 2018

# Downtown Redmond Link Extension SEPA Addendum

## Appendix I Potentially Affected Parcels for the Proposed Design Refinements

August 2018

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# **APPENDIX I**

## **POTENTIALLY AFFECTED PARCELS FOR THE PROPOSED DESIGN REFINEMENTS**

### **Introduction**

Building and operating the Proposed Design Refinements would require acquiring property for right-of-way and other facilities and potential displacement of existing property uses. This appendix presents the likely parcels affected based on the current project design. It is important to note that this list should not be interpreted as the final determination regarding property acquisition, and the list could be updated as the project design is refined. Furthermore, the parcels identified in this appendix reflect the existing conditions at the time the analysis was conducted. Accordingly, the number and/or type of displacements could vary between what has been disclosed in this State Environmental Policy Act (SEPA) Addendum and what is actually required because properties might be redeveloped between the publication date of this Addendum and the time of construction.

There are two types of property acquisitions that could occur, partial and full. Partial acquisitions would acquire part of a parcel and generally would not displace the existing use. Full acquisitions would acquire the full parcel and displace the current use. Full acquisitions include parcels that might not be fully needed for the project but would be affected to the extent that existing uses would be substantially impaired (e.g., loss of parking or access). This includes parcels that would be acquired for construction activities, although in some cases all or part of the parcels would be available for other use or for redevelopment after construction is complete. The type of property acquisition on an affected parcel will be determined during final design.

This appendix amends Appendix G2, Potentially Affected Parcels by Alternative, from the 2011 East Link Final Environmental Impact Statement (Final EIS).

### **Potential Property Acquisitions**

Table I-1 in this appendix lists parcels that are anticipated to be affected by a full or partial acquisition, including map identification numbers, parcel identification numbers, addresses, and building or property name. When there is no building name, the general land use is provided (e.g., residential, vacant). Figures I-1 and I-2 show the location of the parcels identified in Table I-1. In addition to the potential affected properties listed, the Proposed Design Refinements would also require subterranean easements, temporary construction easements, and use of public right-of-way, which are not listed.

**Table I-1. Potentially Affected Parcels<sup>1</sup>**

Map ID	Parcel Number	Property Name	Site Address
RL102	1425059068	Microsoft Building 50 Site	4001 156th Avenue NE
RL103	1425059125	Microsoft Building 50 Site	4201 156th Avenue NE
RL104	7503110040	Liberty Mutual Insurance	15319 NE 45th Street
RL105	7503110030	Microsoft Building 87 Site	4729 154th Place NE
RL106	7503110010	Microsoft Building 88 Site	5069 154th Place NE
RL111	3882310110	Single-family residence	5227 154th Avenue NE
RL112	3882310100	Single-family residence	5305 154th Avenue NE
RL113	3882310090	Single-family residence	5315 154th Avenue NE
RL114	3882310080	Single-family residence	5323 154th Avenue NE
RL115	3882310070	Single-family residence	5401 154th Avenue NE
RL116	3882310060	Single-family residence	5409 154th Avenue NE
RL117	3882310050	Single-family residence	5417 154th Avenue NE
RL118	3882310040	Single-family residence	5425 154th Avenue NE
RL119	3882310030	Single-family residence	5433 154th Avenue NE
RL120	3882310020	Single-family residence	5507 154th Avenue NE
RL121	3882310010	Single-family residence	5517 154th Avenue NE
RL122	2182500050	City of Redmond open space (right-of-way)	West of 154th Avenue NE
RL123	3882300070	Single-family residence	5812 154th Avenue NE
RL124	3882300080	Single-family residence	15405 NE 59th Way
RL126	3882300090	Single-family residence	15406 NE 59th Way
RL127	3882300100	Single-family residence	15414 NE 59th Way
RL 129	None	City of Redmond right-of-way	Northeast corner of SR 520 and NE 60th Street
RL130	943530UNKN	WSDOT	Northeast corner of SR 520 and NE 60th Street
RL130.1	9435300123	WSDOT	Northeast corner of SR 520 and NE 60th Street
RL141	9435300076	City of Redmond right-of-way	Southwest of 156th Avenue NE and NE 65th Street
RL143	542256TRCT	The Meadows club house	6526 156th Avenue NE
RL144	5422560680	Single-family residence	15804 NE 67th Place
RL145	5422560670	Single-family residence	15810 NE 67th Place
RL146	5422560660	Single-family residence	15816 NE 67th Place
RL147	5422560650	Single-family residence	15822 NE 67th Place
RL151	1125059016	Marymoor Park	16300 NE Marymoor Way
RL153	1225059037	Marymoor Park	16325 NE Marymoor Way
RL155	5195500170	Frito Lay	17250 NE 67th Court
RL156	1225059042	Redmond Self Storage	17285 NE 70th Street

**Table I-1. Potentially Affected Parcels (continued)**

<b>Map ID</b>	<b>Parcel Number</b>	<b>Property Name</b>	<b>Site Address</b>
RL157	5195500140	Evangelical Chinese Church	17360 NE 67th Court
RL160	1225059187	Dunkin & Bush Inc.	17301 NE 70th Street
RL161	1225059183	Marymoor Car and Boat Storage (SLF Properties LLC)	17351 NE 70th Street
RL162	122505TRCT	17445 NE 70th Business Park (Koch Living Trust)	17445 NE 70th Street
RL163	1225059260	17445 NE 70th Business Park (Koch Living Trust)	17445 NE 70th Street
RL166	1225059102	6855 176th Business Park (Park 520)	6855 176th Avenue NE
RL168	1225059193	American Mini Storage	17520 NE 70th Street
RL169	1225059194	Redmond Carpet and Interiors	17595 NE 70th Street
RL170	1225059229	17609 industrial parcel	17609 NE 70th Street
RL172	3066100020	Redmond Inn	17601 Redmond Way
RL173	3066100043	Redmond Tire Pros	17657 Redmond Way
RL174	3066100041	Brown Bear Car Wash/Chevron	17809 Redmond Way
RL175	1225059041	17875 to 17991 Redmond Way shopping center	17875 to 17991 Redmond Way
RL176	1225059253	Creekside Crossing	17181 Redmond Way
RL176.1	7202410180	Town Center Open Space	Redmond Way
RL178.1	1225059231	Bartell Drugs	7370 170th Avenue NE
RL184	1225059019	Hopelink	16725 Cleveland Street
RL186	1225059082	16701 Retail	16701 Cleveland Street
RL 226	1225059122	Super Supplements and Mercury's Coffee	17980 Redmond Way
RL 227	1225059092	Sunbelt Rentals (Super Rent Inc)	17950 Redmond Way
RL 228	1225059151	Vacant (Super Rent Inc)	7005 180th Avenue NE
RL 229	719893TR-A	Vacant	Just north of 7005 180th Avenue NE (no address)

<sup>1</sup> The list of acquisitions is representative and should not be considered the final determination regarding property acquisition; the list could be updated as the design is refined. Furthermore, the potentially affected parcels identified reflect the existing conditions at the time of analysis. Because properties that are currently underdeveloped or vacant could be developed between this analysis and the time of construction, the number or type of displacements could vary.

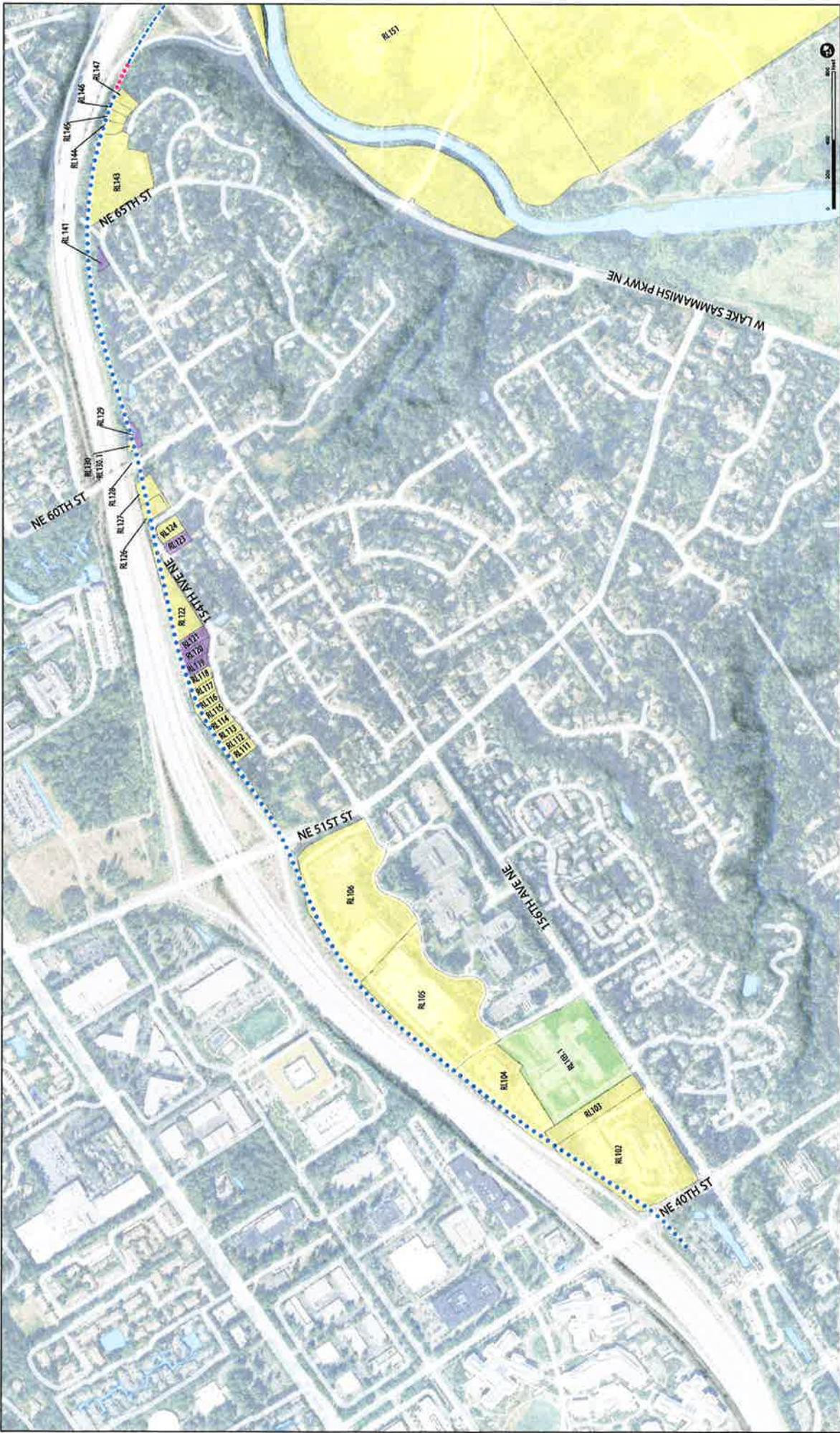


Figure I-1  
 Potentially Affected Parcels  
 NE 40th Street to Sammamish River  
 Downtown Redmond Link Extension

- At-Grade
- Elevated
- Retained Fill
- Retained Cut
- Station Platform
- Station Area
- Parcels affected by the 2011 Project that are not affected by the Proposed Design Refinements
- Parcels affected by the 2011 Project and the Proposed Design Refinements
- Parcels not previously identified that would be affected by the Proposed Design Refinements

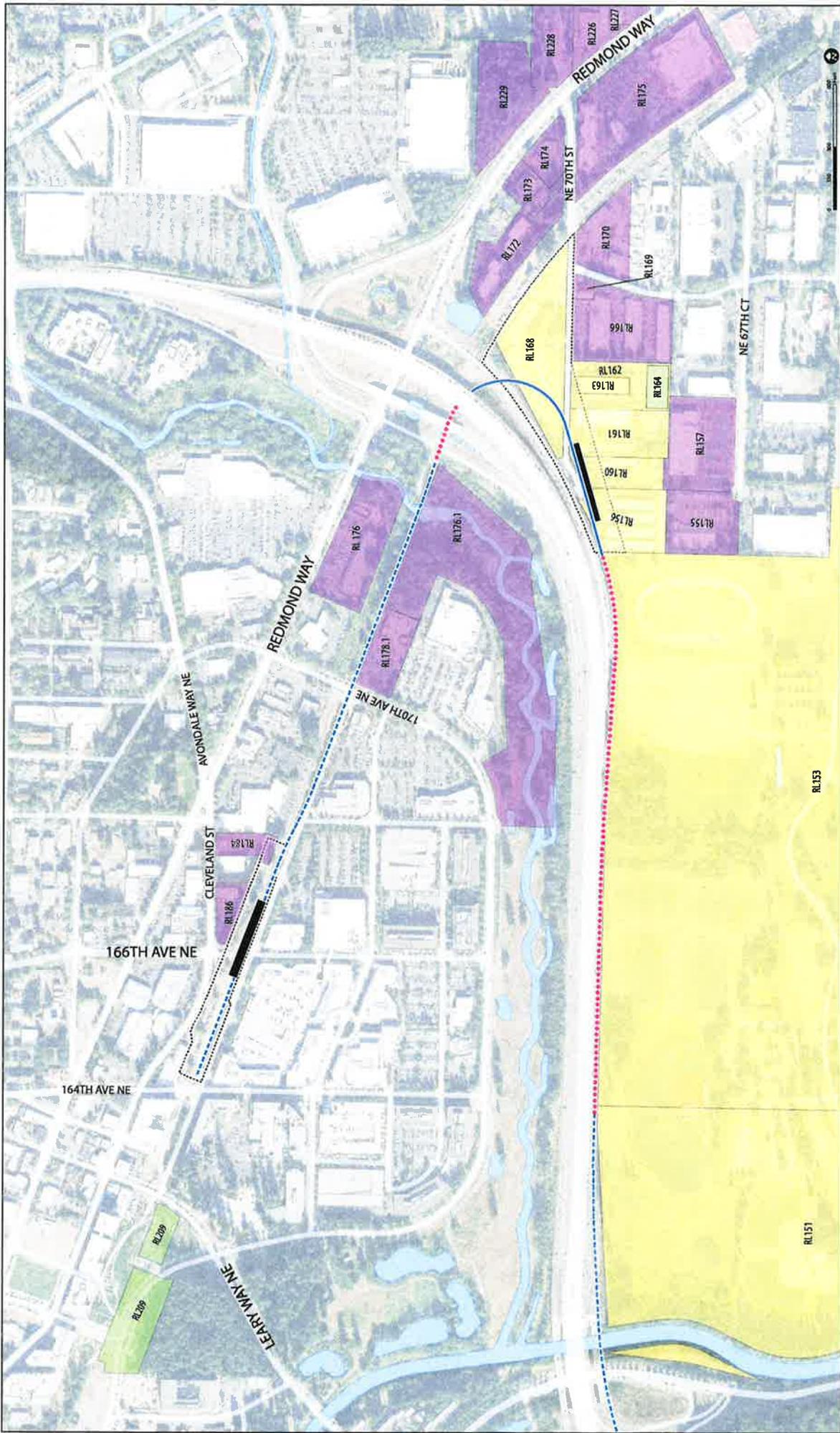


Figure I-2  
 Potentially Affected Parcels  
 Sammamish River to Downtown Redmond  
 Downtown Redmond Link Extension

- At-Grade
- - - Elevated
- Retained Fill
- Retained Cut
- Station Platform
- Station Area
- Parcels affected by the 2011 Project that are not affected by the Proposed Design Refinements
- Parcels affected by the 2011 Project and the Proposed Design Refinements
- Parcels not previously identified that would be affected by the Proposed Design Refinements