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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 51st Street, Redmond

Appeal No. LAND-2018-00701

**APPLICANT’S RESPONSE TO
APPELLANT’S OBJECTION AND
MOTION TO STRIKE**

I. Introduction

In the Zakhareyev Objection to Portions of AEB Brief and Exhibit and Motion to Strike filed September 19, 2018 (“Appellant’s Objection”), the Appellant complains about AEB’s assertion of legitimate and obvious constitutional objections to relief the Appellant seeks, and about the Examiner’s potential consideration of a brand-new SEPA Addendum issued by Sound Transit. Applicant Anjuman-e-Burhani Seattle (“AEB”) respectfully urges the Examiner to disregard the Appellant’s objections and deny the Appellant’s motion to strike.

II. Argument

A. It is neither surprising nor unfair that, in opposing the Appellant’s requested relief in Issues 8 and 10, AEB asserts its constitutional rights to free exercise of religion.

AEB is a party to this appeal because it is the applicant for the Site Plan Entitlement Decision (Ex. C-03) in AEB’s favor. RZC 21.76.060.I.3. AEB is not required to demonstrate its entitlement to the Decision; the Appellant bears the burden of proof. RZC 21.76.060.I.4. The Appellant should not have been surprised by AEB’s arguments that the relief the Appellant requested under Issues 8 and 10 would violate AEB’s rights to free exercise of religion

1 guaranteed under the First Amendment to the U.S. Constitution and Article I, Section 11 of the
2 Washington Constitution. See Appellant’s Objection at 1, 2 (objecting to and moving to strike
3 AEB’s Post-Hearing Brief at 23:5-23 and 27:8 – 28:18).

4 AEB is a local religious community attempting to build a mosque on its property. As the
5 applicant, AEB is participating as a party to this appeal in order to protect its interests, including
6 its right to develop its own property – as allowed under the City’s zoning regulations – with a
7 mosque. AEB’s interests are inherently religious liberty interests. The Appellant is opposing the
8 mosque, and seeks to overturn the City’s Decision on numerous grounds. Ex. C-02. In Issue 8,
9 the Appellant objects to design features identified in the record as an expression of the
10 community’s religious belief. In Issue 10, the Appellant seeks the imposition of a condition
11 restricting growth of the congregation itself.

12 AEB moved to dismiss Issue 10, which asserted: “A condition must be included to limit
13 the congregation to the current number and prohibit expansion.” Ex. C-02 at 8. In its motion to
14 dismiss, AEB stated: “Even if it were required by the RZC (which it is not), *such a condition*
15 *would be blatantly unconstitutional.*” Applicant Anjuman-e-Burhani’s Motion to Dismiss Issues
16 1, 2, 3, 6, 9, and 10 (August 10, 2018) at 6 n.5 (emphasis added). In response to AEB’s motion,
17 the Appellant did not disavow or rescind his demand in Issue 10 for a condition “to limit the
18 congregation to the current number and prohibit expansion.” See Response to Motions to
19 Dismiss from City and AEB (August 20, 2018).

20 The Hearing Examiner denied AEB’s motion to dismiss Issue 10, characterizing it as a
21 “challenge to the growth projections in the project’s traffic impact assessment” that would
22 arguably fall within a review of the adequacy of the streets in the area to serve anticipated
23 demand from the project. Ruling on City and Applicant Motions to Dismiss (August 24, 2018) at
24 2-3. The Examiner acknowledged, however, that “constitutionally based arguments against
25 granting the requested relief of prohibiting expansion of membership for a place of worship will
26 be anticipated.” *Id.* at 2.

1 Thus, even before the hearing convened, the Appellant had ample notice about obvious,
2 indisputable, constitutionally-based objections to the relief he sought under Issue 10.¹ In his pre-
3 hearing brief or his testimony at the hearing, the Appellant could have anticipated and disposed
4 of those objections by disavowing or rescinding his demand in Issue 10 for a condition “to limit
5 the congregation to the current number and prohibit expansion.” He chose not to do so. But
6 having chosen not to address the glaring unconstitutionality of his proposed condition, the
7 Appellant cannot seriously contend that he had no inkling that AEB would point out the obvious
8 constitutional violation such a condition would entail.

9 With respect to Issue 8, the Appellant was aware – from his own exhibit – that many of
10 the design features of the mosque were dictated by the Dawoodi Bohras’ religion. Ex. Z-44 (*see*
11 AEB’s Post-Hearing Brief at 22-23). Notwithstanding his own evidence, the Appellant
12 addressed Issue 8 at the hearing by presenting objections (in testimony by Mr. Tom Flick and Mr.
13 Zakhareyev himself) to precisely those design features that are religiously-based (color, stucco,
14 roof style, and architectural detailing).

15 Mr. Flick also revealed his view that the mosque does not fit in the neighborhood because
16 it is a mosque, adding that he would feel the same way about a church. Testimony of Tom Flick.
17 That amounts to an objection to the religious character of the building, masquerading as a
18 “neighborhood character/design” critique.

19 By making Issue 8 about the religiously-based design features and religious character of
20 the building, the Appellant invited the constitutional objections he now complains about. The
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22 ¹ Pre-hearing briefs were entirely optional in this appeal. Order Setting Hearing and Pre-Hearing Schedule
23 of proof, AEB was under no obligation to provide any response before the hearing to the Appellant’s appeal (Ex. C-
24 02) or the Appellant’s voluminous list of exhibits. AEB did not even know what the Appellant’s arguments would
25 be until September 4, 2018, the deadline for exchanging exhibits and filing optional pre-hearing briefs. AEB
26 participated in the hearing as allowed in the Pre-Hearing Order: by presenting testimony of witnesses and cross-
examining the other parties’ witnesses. AEB was not required to present its “positions” (Appellant’s Objection at 3)
during the hearing.

1 Appellant appears to contend in Issue 8 that the City of Redmond was required to deny design
2 approval because of the mosque's color, roof style, stucco exterior, and architectural detailing,
3 and/or simply because the building is a mosque. In other words, the mosque looks like a
4 mosque, rather than like a wood-sided 1960's-era single family house. AEB's response – that
5 denying design approval based on the religious character of the building or design features that
6 are an expression of religious beliefs would violate AEB's constitutional rights to free exercise of
7 religion – should come as no surprise.

8 There are many reasons why the Redmond Zoning Code does not compel the results the
9 Appellant seeks in this appeal. *See* City's Pre-Hearing Brief (September 4, 2018); City's Post-
10 Hearing Brief (September 17, 2018); Applicant Anjuman-e-Burhani's Post-Hearing Brief
11 (September 17, 2018).² One of those reasons is that the Redmond Zoning Code cannot
12 constitutionally be interpreted or applied in a way that violates AEB's rights to free exercise of
13 religion. AEB's constitutional arguments are just that: arguments. These constitutional
14 arguments arise directly and obviously from the Appellant's case. AEB makes these arguments
15 only because the Appellant contends that the City of Redmond must disapprove the design of the
16 mosque because it looks like a mosque (Issue 8), and impose a condition restricting the growth of
17 the AEB congregation (Issue 10). There is no justification for striking AEB's arguments.

18 The Hearing Examiner is not being asked here to rule on the constitutionality of any City
19 ordinance or regulation. The Examiner must determine whether the Appellant carried his burden
20 of proving that the Technical Committee's decision was clearly erroneous. RZC 21.76.060.I.4.

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24 ² AEB's Post-Hearing Brief is not, under any stretch of the imagination, a "reply brief" (*see* Appellant's
25 Objection at 3). As a party without the burden of proof, AEB was not required to raise any issues or present any
26 "positions" prior to the written closing arguments on the schedule set by the Hearing Examiner. The Appellant's
suggestion that AEB's submittal of written closing arguments was a "tactic" (*see* Appellant's Objection at 4) is
misplaced.

1 With respect to Issues 8 and 10, the Appellant cannot meet that burden by demanding relief that
2 would, if granted, infringe upon AEB's religious freedom.

3 **B. The Hearing Examiner can take official notice of Sound Transit's 2018 SEPA**
4 **Addendum to the 2011 East Link Project FEIS.**

5 AEB asked the Examiner to take official notice of Appendix I to Sound Transit's
6 recently-issued *Downtown Redmond Link Extension 2018 SEPA Addendum to the East Link*
7 *Project Final Environmental Impact Statement*, attached to AEB's Post-Hearing Brief. In the
8 alternative, AEB asked the Examiner to admit this document as an additional exhibit. (See
9 AEB's Post-Hearing Brief at 29.) Under the Hearing Examiner Rules of Procedure, Rule
10 VIII.E.4, the Examiner has authority to take official notice of this judicially cognizable
11 publication by a government agency.

12 The 2018 SEPA Addendum was only recently posted on Sound Transit's website (dated
13 August 31, 2018). AEB was not aware of the existence of Sound Transit's 2018 SEPA
14 Addendum to the July 2011 East Link Project FEIS until after the hearing, and there is no
15 evidence that any other party was aware of it, either.³ AEB brought the newly-issued document
16 to the Examiner's attention in response to the Appellant's counsel's questions of City witnesses
17 and Mr. Flick's testimony at the hearing suggesting that Sound Transit will acquire a portion of
18 AEB's property.

19 In Issue 11, the Appellant contends that the approved AEB site plan "goes against the
20 intent, the stated goals and the requirements of the [sic] RZC 21.28." Ex. C-02 at 8-9. Appendix
21 I to Sound Transit's newly-issued SEPA Addendum is relevant to Issue 11 – but only to the
22 extent that Issue 11 asserts an RZC violation based on pending Sound Transit planning efforts for
23 the Downtown Redmond Link Extension, which are not incorporated into RZC chapter 21.28.

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25 ³ One of the Appellant's exhibits is an excerpt from the *East Link Project Final Environmental Impact*
26 *Statement* (July 2011). Ex. Z-98.

1 Of course, the Examiner need not take official notice of Sound Transit's recently-issued
2 SEPA Addendum; the Examiner may disregard that document and all other evidence relating to
3 Sound Transit's pending planning efforts for the Downtown Redmond Link Extension, because
4 such evidence is irrelevant to a violation of the transit-related building setback requirements in
5 RZC chapter 21.28. See AEB's Post-Hearing Brief at 28-29; City's Post-Hearing Brief at 28-29.

6 **III. Conclusion**

7 For the foregoing reasons, the Applicant respectfully requests that the Hearing Examiner
8 disregard the Appellant's objection and deny the Appellant's motion to strike.

9 Respectfully submitted this 21st day of September, 2018.

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DECLARATION OF SERVICE

On the date stated below, I filed the foregoing document with the Clerk of the City of Redmond Hearing Examiner by email to:

cdxanthos@redmond.gov

and served a copy on each party by email to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of September, 2018, at Seattle, Washington.



Nico Schulz, Legal Assistant

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