

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

In the Matter of the Appeal of)	NO. LAND-2018-00701
)	
)	
Eugene Zakhareyev)	
)	
)	
Of the June 12, 2018 approval Site Plan)	
Entitlement (LAND-2013-00171) for the)	FINDINGS, CONCLUSIONS, AND
Anjuman-E-Burhani Mosque at)	DECISION
15252 NE 51st Street, Redmond)	
_____)	

SUMMARY OF DECISION

The Appellant did not satisfy the burden of proof demonstrating that the City's June 12, 2018 approval of site plan entitlement file number LAND-2013-00171 was unsupported by a preponderance of the evidence or was clearly erroneous. The appeal must be **DENIED**.

SUMMARY OF RECORD

Request/Appeal:

Eugene Zakhareyev (Appellant) appealed a June 12, 2018 decision of the City of Redmond Technical Committee to approve site plan entitlement for the Anjuman-E-Burhani Mosque (File No. LAND-2013-00171). The subject property is located at 15252 NE 51st Street in Redmond.

The Appellant alleged the following 11 errors in the Technical Committee's decision:

1. The City did not comply with additional regulations pertinent to the site driveway located on fully controlled limited access highway.
2. The City erred in using the Type II Administrative review process for the application instead of the Type III Quasi-judicial review as follows from the project seating capacity.
3. City erred in calculating required parking based on seating capacity.
4. City erred in calculating proper setbacks based on proposed building height.
5. City erred in calculating required parking for assembly use.
6. City erred in reviewing traffic impacts of the project.
7. City erred in approving a guest apartment to be part of the building.
8. City erred in not applying scale, bulk and neighborhood character.

9. City erred by not conditioning application on overall building capacity.
10. City erred by not incorporating any growth projections into its review process.
11. City erred by not complying with transit corridor preservation rules.

After a pre-hearing conference on July 13, 2018 and in response to pre-hearing motions to dismiss submitted by the City and Applicant Anjuman-E-Burhani, the Hearing Examiner dismissed appeal issues 1 and 2. As described in the Hearing Examiner's August 24, 2018 *Ruling on City and Applicant Motions to Dismiss*, appeal issue 1 was dismissed because the Hearing Examiner lacked authority to grant the relief requested. Appeal issue 2 was dismissed because the Hearing Examiner was not persuaded that she has jurisdiction to hear a challenge of a decision not issued or to direct the City to require a different review process. *Rulings on City and Applicant Motion to Dismiss*.

Hearing Date:

An open record hearing on the appeal was conducted on September 10, 2018. The Hearing Examiner left the record open until September 17, 2018 to allow the parties to submit simultaneous post-hearing briefing, which was timely submitted.

In response to the Applicant's post-hearing brief, the Appellant submitted an objection and motion to strike, because the Applicant included with the brief an excerpt, not offered on the record, of the 2018 SEPA Addendum to the East Link Project Final Environmental Impact Statement, and constitutional arguments not previously presented.

The Hearing Examiner declines to take notice of the SEPA Addendum and the document is not admitted in the record. The Hearing Examiner will also not admit the exhibit attached to the Appellant's motion to strike. The constitutional arguments in Applicant's closing brief are not stricken from the record; they were raised in the Applicant's pre-hearing motion to dismiss and are unsurprising given that the proposal is a religious facility. The matter was an open record appeal hearing and the record was held open for legal argument. However, the following findings and conclusions do not address constitutional arguments. As the parties are aware, hearing examiners are "creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication." *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636 (1984). The local land use hearing is a forum limited in scope to determining the correct answer under local regulations.

Testimony:

At the open record appeal hearing, the following individuals presented testimony under oath:

For Appellant:

1. Eugene Zakhareyev, Appellant
2. Hans Gundersen
3. Thomas Flick
4. William Popp, William Popp Associates

Attorney Richard Aramburu represented the Appellant at the hearing.

For the City:

1. Sarah Pyle, Senior Planner, City of Redmond
2. David Lee, Senior Planner, City of Redmond
3. Min Luo, Senior Transportation Engineer, City of Redmond

Attorneys Fred Rubstello and Kate Hambley represented the City at the hearing.

For Applicant:

1. Victor Salemann, P.E., Transportation Solutions, Inc.
2. Ali Haveliwala, Anjuman-E Burhani

Attorneys Sarah Mack and Lynn Cohee represented the Applicant at the hearing.

Exhibits:

At the open record hearing the following exhibits were admitted in the record:

Appellant's Exhibits

1. Summary report, William Popp Associates, dated August 27, 2018
2. City of Redmond Technical Committee Notice of Decision for Anjuman-E-Burhani (AEB), dated June 13, 2018
3. Land use appeal application LAND-2013-00171, dated June 27, 2018
4. Updated operational analysis memo for NE 51st Street, TENW, dated February 17, 2017
5. Curriculum vitae of William Popp, Sr., PE, William Popp Associates, dated August 27, 2018
6. Supplemental signal warrant analysis for NE 51st Street and 154th Avenue NE, TENW, dated October 31, 2017
7. Eugene Zakhareyev comments regarding SEPA-2017-00172, dated March 23, 2017
8. Eugene Zakhareyev response to City of Redmond response regarding SEPA-2017-00172, dated March 30, 2017
9. Aerial photograph of NE 51st Street and 154th Avenue NE (Bing maps), captured July 25, 2018
10. Photograph of site taken from 154th Avenue NE, captured April 29, 2014
11. Right-of-way (ROW) agreement between State of Washington and City of Redmond, dated August 7, 1969
12. Judgment and Decree for 15252 NE 51st Street property, dated February 20, 1974
13. Quitclaim deed between State of Washington and City of Redmond, dated March 12, 1991
14. Letter from Ramin Pazooki, Washington State Department of Transportation (WSDOT), to David McCann, regarding access for 15252 51st Street, dated July 16, 2008

15. Letter from Lorena Eng, WSDOT, to Nazim Nice, regarding access for 15252 51st Street, dated February 27, 2009
16. Email correspondence between Pat Lyga and Dennis Lisk, City of Redmond, regarding access for 15252 NE 51st Street, dated January 16-22, 2009
17. Statutory Warranty Deed between David and Julie Ann McCann and Anjuman-E-Burhani, dated August 4, 2010
18. Letter from Ramin Pazooki, WSDOT, to City of Redmond, regarding access and design requirements for 15252 51st Street, dated August 24, 2012
19. Email correspondence between Ramin Pazooki, WSDOT, and Ann Salay, Assistant Attorney General, regarding access and jurisdiction for 15252 NE 51st Street, dated June 18-23, 2014
20. Email correspondence between Ramin Pazooki, WSDOT, and Eugene Zakhareyev, regarding access and drainage for 15252 NE 51st Street, dated July 22-August 5, 2014
21. WSDOT narrative appraisal report, Valbridge, dated January 16, 2018
22. Letter from J. Richard Aramburu to WSDOT, regarding access for 15252 51st NE Street, with attachments, dated March 23, 2018
23. Letter from Lorena Eng, WSDOT, to J. Richard Aramburu, with attachments, dated April 25, 2018
24. Letter from J. Richard Aramburu to City of Redmond, regarding access, with attachment, dated May 15, 2018
25. Letter from Mike Cotten, WSDOT, to J. Richard Aramburu, dated May 18, 2018
26. Email correspondence between Eugene Zakhareyev and Hank Myers, dated April 11-13, 2018
27. Staff memo 18-081 to Redmond City Council agenda, with attachment, dated May 1, 2018
28. May 1, 2018 Redmond City Council meeting approved minutes, dated May 15, 2018
29. Signed ROW easement granted by City of Redmond to Anjuman-E-Burhani, dated June 19, 2018
30. Memo from William Popp, Sr., PE, regarding highway approach classification, dated May 14, 2018
31. City of Redmond document, Multimodal Plan-Based Concurrency System Administrative Guidelines, dated September 2014
32. Transportation concurrency application, dated January 20, 2017
33. AEB memo from JTE Traffic Engineering to City of Redmond, regarding Anjuman-E-Burhani site access sight line deviation request, dated December 23, 2016
34. City of Redmond response to JTE memo, dated January 17, 2017
35. [Not offered]

36. [Not offered]
37. [Not offered]
38. [Not offered]
39. [Not offered]
40. City of Redmond memo, Citizen Questions, Comments and City of Redmond Answers Regarding Anjuman-E-Burhani Application, made available February 27, 2018
41. Muslim Association of Puget Sound (MAPS) Assembly Facility traffic impact study, Transpo Group, dated June 21, 2010
42. Islamic Center of Redmond (ICOR) Assembly Facility traffic impact study, Transpo Group, dated April 20, 2010
43. AEB project memo to City of Redmond, regarding project capacity, dated January 23, 2013
44. City of Redmond memo to Design Review Board, dated April 6, 2017
45. City of Redmond Notice of Decision for Type I permit, dated June 27, 2013
46. City of Redmond memo, administrative interpretation regarding fixed seat definitions, dated April 29, 2015
47. Email from Sarah Pyle, City of Redmond, to Eugene Zakhareyev, dated April 29, 2015
48. Google search for 'Redmond Administrative Interpretation', printed July 16, 2018
49. Publicly available administrative interpretations from the City of Redmond website, printed July 16, 2018
50. Email correspondence between Rob Crittenden and Thara Johnson, City of Redmond, regarding parking for AEB project, dated June 22, 2012
51. Anjuman-E-Burhani architectural plans, undated
52. Memo from City of Redmond staff to DRB, staff Response to letter from Eugene Zakhareyev, dated April 2, 2017
53. AEB project pre-application conference submittal, dated February 23, 2012
54. AEB traffic and parking letter, JTE, dated December 20, 2016
55. AEB traffic and parking letter, JTE, dated March 15, 2014
56. AEB traffic and parking letter, JTE, dated April 19, 2013
57. AEB traffic and parking letter, JTE, dated May 28, 2013
58. AEB traffic and parking letter, JTE, dated June 5, 2012
59. [Not offered]
60. [Not offered]
61. Photograph of 5204 154th Avenue NE (Google maps), printed July 26, 2018

62. Photograph of 5208 156th Avenue NE (Google maps), printed July 26, 2018
63. Photograph of 5315 154th Avenue NE (Google maps), printed July 26, 2018
64. Anjuman-E-Burhani applicant presentation for DRB, created March 3, 2017
65. Anjuman-E-Burhani design standards checklist, created March 13, 2017
66. Letter from City of Redmond to Emerald Heights, regarding the proposal scale, dated July 11, 2017
67. Emerald Heights Assisted Living building DRB presentation, dated June 15, 2018
68. [Not offered]
69. Letter from AEB to John Marchione, Mayor, City of Redmond, regarding waiving easement approval fees, dated April 10, 2018
70. Printout of AEB representative comment on Facebook, dated July 2, 2018
71. Information from Houston mosque complex website discussing congregation growth, printed July 30, 2017
72. Sound Transit preliminary Redmond Town Center (RTC) to Downtown extension plan, dated May 18, 2018
73. Email correspondence between Sarah Pyle and Eugene Zakhareyev, City of Redmond, regarding potential effects of ST3 on NE 51st Street, dated May 20-23, 2018
74. Email correspondence between Sarah Pyle and Eugene Zakhareyev, City of Redmond, regarding access for 15252 NE 51st Street, dated May 30-June 11, 2018
75. Email correspondence between Steven Fischer and Eugene Zakhareyev, regarding minutes from City-residents meeting, dated September 14-16, 2014
76. High Capacity Transit (HCT) Corridor Preservation Map book, dated August 16, 2011
77. Letter from Sarah Pyle, City of Redmond, to AEB, dated March 13, 2018
78. Email from Don Stone, Applicant's architect, to Thara Johnson, City of Redmond, dated April 07, 2014
79. AEB transportation management plan, dated January 2, 2014
80. Memo from William Popp Associates, regarding AEB parking and traffic analysis critique, dated March 23, 2017
81. TENW comment letter to AEB traffic and parking, dated April 1, 2014
82. Letter to Rob Odle, City of Redmond Planning Director, dated April 17, 2017
83. Email from Felix Pallisoc, WSDOT, to Min Luo, City of Redmond, regarding WSDOT comments on AEB traffic study, dated April 26, 2017
84. Email correspondence between Felix Pallisoc, WSDOT, and Sarah Pyle, City of Redmond, regarding additional WSDOT comments to AEB traffic study, dated October 12-December 11, 2017
85. AEB response to WSDOT comments by TSI, dated July 24, 2017

86. AEB follow up to WSDOT by TSI, dated November 16, 2017
87. Memo from William Popp Associates to WSDOT, regarding TSI responses to WSDOT comments, dated September 14, 2017
88. Anjuman-E-Burhani site and floor plans, undated
89. Email correspondence between Erika Vandenbrande and Eugene Zakhareyev, City of Redmond, regarding information to Redmond City Council during easement vote, dated June 6-27, 2018
90. Neighborhood map and spreadsheet of lot and house sizes, prepared by Eugene Zakhareyev, dated August 2018
91. April 6, 2017 Design Review Board minutes, regarding design approval for the 2013 application, dated April 6, 2017
92. Photograph of NE 51st Street traffic in vicinity of AEB site, taken by Eugene Zakhareyev, taken 5:00 PM, October 11, 2017
93. Email correspondence between City of Kirkland and Eugene Zakhareyev, regarding AEB planning permits, dated March 14-15, 2017
94. Email correspondence between City of Kirkland and Eugene Zakhareyev, regarding AEB planning permits, dated March 19-22, 2017
95. Photograph of Anjuman E Shuhajee Houston mosque during Ramadan 2010, taken by Dr. Mulla Zakir Hatim Saifee on April 16, 2017
96. Members of the Dawoodi Bohra community offering “namaz” prayers in Bhopal, India (Sanjeev Gupta/EPA, September 2016)
97. ST3 board resolution R2018-14, dated May 24, 2018
98. East Link Project final environmental impact statement (EIS) excerpt, dated July 2011
99. City of Redmond Ordinance No. 1930
100. City of Redmond Ordinance No. 2559

City of Redmond Exhibits

1. LAND2018-00701 appeal staff report, dated September 4, 2018
2. LAND2018-00701 appeal application, dated June 27, 2018
3. LAND-2013-00171 Technical Committee Site Plan Entitlement Transmittal Letter and Notice of Decision, dated June 12, 2018
4. Anjuman-E-Burhani, general application, undated
5. Anjuman-E-Burhani cover sheet, site plan, and full plan set, dated January 27, 2017
6. Seattle Anjuman-E-Burhani Masjid site plan entitlement building elevations, dated January 27, 2017
7. City of Redmond design standards checklist, submitted during 2017 design review, undated

8. Anjuman-E-Burhani Masjid Mosque design review submittal, Project LAND-2013-00171, submitted during 2017 design review, undated
9. Design Review Board meeting minutes, dated April 6, 2017
10. Anjuman-E-Burhani Community Complex traffic and parking letter, JTE, dated May 28, 2013
11. Anjuman-E-Burhani Community Complex traffic and parking letter 206 update R1, JTE, dated December 20, 2016
12. Response to WSDOT comments, Transportation Solutions, Inc., regarding Anjuman-E-Burhani Community Complex, dated July 24, 2017
13. Administrative Interpretation of RZC 21.08.280.B, regarding fixed seating, dated April 29, 2015
14. Administrative Interpretation of RZC 21.08.280.A, regarding parsonage as accessory use, dated April 29, 2015
15. Downtown Redmond Link Extension (DRLE) preliminary engineering drawings, intermediate submittal, dated April 3, 2018
16. DRLE conceptual design drawings, final draft, dated July 30, 2018
17. Technical Committee request for additional information, dated March 7, 2016
18. State Environmental Policy Act (SEPA) Determination of Non-significance (DNS) for AEB Project, dated March 9, 2017
19. Blank land use entitlement application
20. Planning Staff's PowerPoint presentation

Applicant's Exhibits

1. Expert witness qualifications for Victor Salemann, PE
2. Photograph of worship area in the Mosque of Al-Hakim (Jamea-al-Anwar) in Cairo, Egypt, taken by Mr. Ali Haveliwala on August 15, 2018

Other Documents in the Record

1. SEPA appeal application form
2. Appeal application form
3. Hearing Examiner's Order setting hearing and pre-hearing schedule
4. Appellant's notice of appearance
5. Appellant's notice of unavailability
6. Withdrawal of Susan Wilkins' appeal
7. Applicant's notice of appearance
8. Order acknowledging withdrawal and dismissal of SEPA appeal
9. Applicant's motion to dismiss

10. City of Redmond's motion to dismiss
11. City of Redmond's response to Applicant's motion to dismiss
12. Appellant's response to motions to dismiss
13. Hearing Examiner's ruling on motions to dismiss
14. City of Redmond's notice of withdrawal and substitution
15. Appellant's witness and exhibit lists
16. Appellant's supplemental witness and exhibit lists
17. Appellant's pre-hearing brief
18. Appellant's post-hearing brief
19. Objection and motion to strike (attached email labeled as Exhibit A is not admitted)
20. City's witness and exhibit lists
21. City's supplemental witness and exhibit lists
22. City's pre-hearing brief
23. City's post-hearing brief
24. Applicant's witness and exhibit lists
25. Applicant's supplemental witness and exhibit lists
26. Applicant's post-hearing brief without attachment (the attached 2018 SEPA Addendum excerpt is not admitted)
27. Applicant's reply to Appellant's objection to motion to strike portions of Applicant's closing brief and attachment

Upon consideration of the argument, testimony, and exhibits submitted, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Project Background

1. The property that is the subject of this appeal is located at 15252 NE 51st Street in Redmond (Tax Parcel Numbers 2182500082 and 2182500080, subject property). The owner is Applicant Anjuman-E-Burhani (AEB) Seattle. The subject property is approximately 1.12 acres in area and is developed with a single-family residence.¹ *Exhibits C-4 and C-5.*
2. The Applicant proposes to replace an existing abandoned single-family residence with a 22,657 square foot mosque, which would include prayer areas, classrooms, kitchen/dining facilities, and a parsonage. The building would be three stories high with

¹ The reference to a site area of 2.3 acres on page 3 of the staff report is a typo. *David Lee Testimony; Exhibit C-4.*

the ground level floor partly below grade, and a footprint of 10,409 square feet. The building (excepting the minaret and mechanical) would be 30 feet tall. The minaret would be 45 feet tall. *Exhibit C-5.*

3. The subject property is an irregularly shaped property with five sides located at the northeast corner of the SR-520/NE 51st Street interchange. The shortest of the five sides is the site's only frontage on a right-of-way, NE 51st Street, at its south boundary. The southwest property line veers northwesterly away from NE 51st Street, adjacent to undeveloped City of Redmond WSDOT right-of-way. The west property line abuts a narrow sliver of Parcel 3882310140 (addressed as 5215 154th Ave NE) and the SR-520 right-of-way. The site's north (rear) property line abuts residential lots bordering 154th Avenue NE. The east property line abuts a large residential parcel. *Exhibits C-8 (sheet 5), Z-44, Z-72, and Z-90.* Surrounding land uses include approximately 2,000 square foot single-family residences to the north and east of the subject property (see Exhibits C-8, Z-61, Z-62 and Z-63 for examples) and commercial buildings across NE 51st Street to the south associated with the Microsoft campus. The narrow sliver of land to the west is part of residential parcel 5215 - 154th Ave NE and is vacant. *Exhibits C-5, C-6, C-8, and Z-90; Testimony of Thomas Flick and Eugene Zakhareyev.*
4. The primary elements of the proposed mosque include: the prayer area ("Masjid") consisting of a main floor level with space for 81 worshippers and an upper level with space for 66 worshippers for a total capacity of 147 worshippers; the community gathering space ("Mawaid") adjacent to the Masjid to be used for community events, including meetings, weddings, other special events, and communal meals; on the second floor of the Mawaid, classrooms for Saturday school, a library, and principal's office; and a parsonage, consisting of a three-bedroom residence connected by an elevator to "guest quarters" (a separate bed and bath suite) on the main floor. *Exhibits C-6, Sheets A2.02 and A2.03.*
5. The proposed mosque would serve a small Muslim sect (Dawoodi Bohra) that represents less than one percent of the world's Muslims. In the United States, there are only approximately 5,000 Dawoodi Bohra Muslims, living primarily in Los Angeles, Houston, and Chicago. The Applicant congregation consists of approximately 150 people, including children, currently leasing space in a Kirkland business park for worship and other activities. The Applicant does not anticipate significant growth, as historically the incoming members take the place of outgoing members. The Applicant submitted that members of other Muslim sects would not be interested in attending worship at the proposed facility because the Dawoodi Bohra sect is unique, using a different calendar of sacred days and events. *Ali Haveliwala Testimony.*

Regulatory Background

6. The subject property is located within the Overlake Neighborhood as identified in the Comprehensive Plan, and is zoned R-5 (Single-Family Urban Residential). *Exhibit R-1.* The purpose of the R-5 zone is described in the Redmond Zoning Code (RZC) as follows:

The R-5 Single-Family Urban Residential zone provides for primarily single-family residential neighborhoods on lands suitable for residential development with an allowed base density of five dwellings per gross acre. This designation provides for stable and attractive suburban residential neighborhoods that have a full range of public services and facilities. To complement the primarily residential nature of these zones, some nonresidential uses are allowed.

RZC 21.08.080.A.

7. Religious institutions with “less than 250 seats” are allowed in the R-5 zone. Those with between 250 and 750 seats require approval of a conditional use permit. *RZC 21.08.070.B.*
8. As stated in the RZC 21.76.070.Y(1), the purpose of the site plan entitlement review process is to achieve the following:
 - a. Compliance with the provisions of the RZC and all other applicable law;
 - b. Coordination, as is reasonable and appropriate, with other known or anticipated development on private properties in the area and with known or anticipated right-of-way and other public projects within the area;
 - c. The encouragement of proposals that embody good design principles that will result in high-quality development on the subject property;
 - d. The adequacy of streets and utilities in the area of the subject property to serve the anticipated demand from the proposal.
 - e. Determination that the proposed access to the subject property is the optimal location and configuration for access. *RZC 21.76.070(Y)(1).*

The review criteria require the Technical Committee to evaluate applications against the State Environmental Policy Act and the RZC. *RZC 21.76.070.Y(3).*

Procedural Background

9. The Applicant submitted the subject site plan entitlement (SPE) application on February 13, 2014. *Exhibits C-2 and C-3.*
10. The Design Review Board considered the application at three different meetings, including pre-application meetings on July 18, 2013 and August 22, 2013, and a third meeting on April 6, 2017. The Design Review Board approved the design on April 6, 2017. *Exhibits Z-44 and C-9.*
11. The City reviewed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA) and determined that the project would not have a probable, significant adverse impact on the environment. The City issued a determination of non-significance (DNS) on March 9, 2017. *Exhibit C-18.*

12. The Appellant and Susan Wilkins timely appealed the DNS, but subsequently both withdrew their appeals. *Documents 1, 6, and 8.*
13. The City Technical Committee approved the SPE on June 12, 2018. *Exhibit C-3.* The Appellant timely appealed the decision on June 27, 2018. The Appellant alleged the following 11 errors in the Technical Committee’s decision:
 1. The City did not comply with additional regulations pertinent to the site driveway located on fully controlled limited access highway.
 2. City erred in using the Type II Administrative review process for the application instead of the Type III Quasi-judicial review as follows from the project seating capacity.
 3. City erred in calculating required parking based on seating capacity.
 4. City erred in calculating proper setbacks based on proposed building height.
 5. City erred in calculating required parking for assembly use.
 6. City erred in reviewing traffic impacts of the project.
 7. City erred in approving a guest apartment to be part of the building.
 8. City erred in not applying scale, bulk and neighborhood character.
 9. City erred by not conditioning application on overall building capacity.
 10. City erred by not incorporating any growth projections into its review process.
 11. City erred by not complying with transit corridor preservation rules.

Exhibit C-2. On August 24, 2018, the Hearing Examiner dismissed issues 1 and 2. *Document 13.*

Parking Calculation/Parking for Assembly Uses (Issues 3 and 5)

14. The parking requirement for religious institutions, as described in the City’s R-5 use regulations, is a minimum of one parking space per 1,000 square feet gross floor area “for assembly” or per “5 fixed seats,” and a maximum of one parking space per “3 seats.” *RZC 21.08.080.C.* The Churches, Temples, Synagogues, and Other Places of Worship section of the Residential Regulations chapter of (RZC 21.08.280) contains a parking requirement that “the use shall comply with the parking regulations for assembly uses, except that in no event shall parking be in excess of one space per three seats in a residential zone.” *RZC 21.08.280.C(2).* The R-5 use regulations contained in RZC 21.08.080 do not identify “assembly uses” as a use category. *RZC 21.08.080.C.*
15. For purposes of the Churches, Temples, Synagogues, and Other Places of Worship regulations, “seat” is defined as “(1) One individual fixed seat; or (2) A length of 18 inches on a pew or bench; or (3) A measurement of seven square feet per person for the area seating the general assembly with movable chairs or other portable seating fixtures. The total area includes aisle space, but excludes areas such as stage and podium areas, space for musical instruments, and lobbies.” *RZC 21.08.280.B.*

16. The Churches, Temples, Synagogues, and Other Places of Worship regulations require City approval of a traffic mitigation plan to address “traffic control, parking management (including the mitigation of overflow parking into adjoining residential areas), and traffic movement to the arterial street system.” Excess parking “may be permitted on existing off-site satellite parking lots, subject to City approval of a joint use agreement.” *RZC 21.08.280.C(5)*.
17. In an administrative interpretation dated April 29, 2015, the City determined that, for purposes of determining seating capacity under RZC 21.08.280, a “uniform area permanently affixed to the floor shall be allowed to be considered as a fixed seat.” *Exhibit C-13*. The Applicant proposes to demarcate 2.5-foot by four-foot areas where prayer rugs are to be located (see Exhibit A-2 for example), with the outline of each space for a prayer rug either printed into the design of the carpet or marked permanently on the floor. Rugs would be laid out in a uniform manner so that they point towards Mecca. Taking into account aisles between rows and around the room perimeter, the two proposed prayer areas yield a total of 147 “fixed seats” using this methodology. The designated area for each prayer rug (excluding aisles) is 10 square feet, larger than the seven square feet per person indicated in RZC 21.08.280.B(3) for portable seating fixtures. *Exhibits C-6, Sheets A2.02 and A2.03; Z-43; A-2; Ali Haveliwala Testimony*.
18. The concept of prayer rug area as a “seat” has been used before in review of mosque projects in Redmond. In a 2010 traffic/parking study for the Islamic Center of Redmond (ICOR) mosque, the transportation engineer estimated the number of seats based on the area needed for the rugs (approximately nine square feet in that case), and calculated parking demand based on the resulting number of seats. A 2010 traffic/parking study for the Muslim Association of Puget Sound (MAPS) mosque used the same methodology to determine the number of seats. *Exhibits Z-41 and Z-42*.
19. The proposed 147 prayer rug locations are depicted in the project plans. *Exhibit C-6, Sheets A2.02 and A2.03*. These plans served as the basis for Design Review Board review and approval as well as SPE review and approval, and the Applicant is specifically bound to limit the maximum number of worshipers to 147 at a time by the approval, a limit the Applicant representative acknowledged on the record.² Should the mosque membership grow to the point that the approved 147 prayer rug capacity is inadequate and they wanted to expand the seating capacity the Applicant would be required to apply for an SPE amendment, which would be a minor administrative modification or a new Type II project review; both would be appealable. Should the City become aware that the Applicant was violating the maximum seating capacity approved, code enforcement would result in notice and order requiring return to compliance. Through the code enforcement process, the City could add additional conditions, impose monetary fines, and/or revoke the permit. *Sarah Pyle Testimony; Ali Haveliwala Testimony; David Lee Testimony*.

² Although the SPE decision states that the project proposed 150 seats on pages 5 and 6, Planner David Lee testified that these two references to 150 seats are typos. The decision correctly notes the 147 seat proposed occupancy on page 7. *Exhibit C-3; David Lee Testimony*.

20. The approved 147 designated spaces for prayer rugs would be adequate for the congregation because attendance at prayers is not compulsory for Dawoodi Bohras. The prayer and multipurpose areas of the mosque would not be used simultaneously. Prayer is conducted only within the designated, sanctified prayer areas. The Applicant anticipates infrequent "peak" or "special event" parking demands based on past event frequency. Applicant representative Ali Haveliwala testified that in the past 15 years, members of the community have celebrated four weddings and five "misaaqs" (similar to a Bar/Bat Mitzvah) locally, because congregants prefer to travel to India for such celebrations. He also acknowledged that weddings are invitation based and do not typically include all community members. Finally, if the local number of Dawoodi Bohra expand significantly for presently unforeseen reason (e.g., an unusual concentration of Dawoodi Bohra hired by Amazon at one time), it is more likely that they would seek a second mosque nearer to or in Seattle, because the millennials prefer to be in or close to the bigger City. He noted it is not uncommon in the US cities with larger Dawoodi Bohra populations, such as Houston, to have second and third tier facilities to accommodate fluctuations in congregation size. *Ali Haveliwala Testimony.*
21. Based on the standard of one parking space per five fixed seats, the City determined that the minimum number of on-site parking spaces is 29. The proposed site plan meets this requirement as the number of on-site spaces shown is 36. *Exhibits C-3 and C-5.* The two worship areas total 2,858 square feet, in a total building area of 22,657 square feet. *Exhibits C-1 and C-6.* If instead the parking is based on requiring one space per 1,000 square feet, the assembly area on its own would require three parking spaces, while the entire mosque would require 23 spaces.
22. The Applicant proposed to mitigate the potential for overflow parking impacts during peak times by providing valet parking within the on-site drive aisles (providing an additional 29 spaces), and by shuttling members from an off-site VFW parking lot (30 spaces) pursuant to an agreement with the VFW. This would result in parking for a total of 95 vehicles. *Exhibit C-6; Exhibit Z-79; David Lee Testimony.*
23. Based on the traffic mitigation plan requirement of RZC 21.08.280.C(5) and RZC 21.52.020, the SPE decision requires the Applicant to submit and obtain City approval of a transportation management program (TMP) prior to civil construction drawing approval. *Exhibit C-3; David Lee Testimony.* The Applicant prepared a document entitled "Transportation Management Plan" in 2014, but it has not been approved. For overflow parking mitigation, the plan describes strategies including appointing a Community Transportation Coordinator to maintain a bulletin board with rideshare information, promoting public transit use, assigning flaggers to assist with vehicle and pedestrian circulation, among other recommendations on additional mitigation. During special events, the coordinator would organize valet parking and shuttle service. The document does not include metrics establishing when these measures would be deemed inadequate, but it specifies that in the event the plan does not prevent spillover impacts, the Applicant would pursue other measures such as negotiating additional off-site parking. *Exhibit Z-79.*

24. The Applicant provided vehicle counts from actual weekly and special events at Kirkland AEB from November 13, 2012 to October 22, 2013. The vast majority of the events resulted in the on-site parking of less than 36 vehicles. Sixteen events resulted in on-site parking of more than 36 vehicles, but the highest number was 50. *Exhibit Z-79.*
25. The Appellant argued that the parking requirement for the use should be based on the seven square foot per person standard of RZC 21.08.280.B(3) because prayer rugs are moveable. Based on seven square feet per person, the proposed prayer areas would result in a seating capacity of 408 (or 273 if aisle areas excluded). The Appellant cited to the definition of “fixed seating” in the International Building Code, which is not specifically adopted in the RZC. *Exhibits C-1 and C-2; Document 17.*
26. The Appellant argued that the requirement in RZC 21.08.280.C(2) that the use comply with the parking regulations for “assembly uses” should be interpreted in light of the International Building Code definition of assembly uses, and that the RZC use categories that correlate with the definition (community halls, community indoor recreation, and arts, entertainment and recreation facilities) all have an “adequate to accommodate peak use” parking requirement in the RZC (see e.g., RZC 21.12.080.B). *Exhibit C-2; Documents 17 and 18.*
27. The City submitted that Redmond Municipal Code 15.08.020 adopts the IBC as the *building code* for the City but that its adoption was not intended to supplant or offer interpretations of specific definitions in the RZC. *Exhibit C-1; David Lee Testimony.*
28. RZC 21.08.280.C.5 states as follows (emphasis added):

A traffic mitigation plan shall be submitted for approval by the City. The plan shall address traffic control, parking management (including the mitigation of overflow parking into adjoining residential areas), and traffic movement to the arterial street system. In addition to on-site parking requirements, parking in excess of the maximum may be permitted on existing off-site satellite parking lots, subject to City approval of a joint use agreement. Offsite parking in residential zones shall be limited to lots shared with existing institutional uses, such as schools.

Building Setbacks (Issue 4)

29. The maximum building height for places of worship in a residential zone is 50 feet “inclusive of steeples, bell towers, crosses, or other symbolic religious icons.” *RZC 21.08.280.D (1)(d).* The RZC defines building height as: “The vertical distance measured from the average finished grade around the building to the highest point of the structure.” *RZC 21.78.*
30. The minimum property line setback applicable to places of worship in a residential zone is 20 feet. However, “building setbacks shall be increased by five feet for every one foot in building height over 30 feet.” *RZC 21.08.280.D(1)(c); Testimony of Ms. Pyle.* This setback requirement exceeds that required for residences in the R-5 zone, which may

locate as close as five feet to a side property line, 10 feet to a rear property line, and 15 feet to a front property line. *RZC Figure 21.08.080(B)*.

31. The proposed building would be set back 20 feet from the west (side) and north (rear) property lines, approximately 30 feet from the east (side) property line, and approximately 80 feet from the front (south) property line at its closest point. The portions of the building exceeding 30 feet in height (the mechanical room and the minaret) would be set back at least five additional feet for every foot of height over 30. Planner Sarah Pyle testified that the purpose of this varying setback based on height is to preserve open air and light access for adjacent properties. *Exhibit C-6; Sarah Pyle Testimony*.
32. The City's interpretation of the increased building setback requirement as only applying to the portions of the building exceeding thirty feet is not recent in origin. The minutes from the July 18, 2013 pre-application Design Review Board meeting reflect that the City planner presenting the AEB project described the requirement as follows:

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

Exhibit Z-44, July 2013 minutes, page 6.
33. The Appellant argued that the relevant ordinances (including RZC 21.08.280 and the definitions of building height, average grade level, setback, and setback line contained in RZC 21.78) are unambiguous and require the entire structure to be set back the distance required for the highest point of the building. *Appellant Zakhareyev's Prehearing Brief*. For the proposed structure, this would require minimum setbacks of 95 feet from each property line (20 + (15 x 5)).
34. The City and the Applicant argued that to interpret the code based on the Appellant's two-dimensional methodology (as opposed to the three-dimensional methodology advocated by the Applicant and the City) would lead to an absurd result, as it would require religious buildings at the maximum height of 50 feet to be set back 120 feet from all property lines and devote a land area to setbacks that is more than ten times the minimum lot area in the R-5 zone. *City's Pre-Hearing Brief; Applicant Post-Hearing Brief*.

Traffic (Issue 6)

35. Access to the subject property is from NE 51st Street via an existing 14-foot wide driveway. The Applicant proposes to widen the driveway to 20 feet to accommodate the change in use. Because the driveway is located within a limited-access portion of NE 51st Street due to proximity to the SR-520 interchange, the change in access required an

easement from the City of Redmond, which owns the right-of-way. *Exhibits Z-11, Z-12, Z-18, Z-23, and Z-25.*

36. The City Council approved granting the Applicant an access easement on May 1, 2018, subject to compliance with WSDOT's design standards for limited access facilities, including compliance with Section 530.10 of WSDOT's Design Manual, restriction of access to right-in/right-out, compliance with sight distance standards, WSDOT approval of any channelization changes in WSDOT right-of-way, and payment of compensation. *Exhibits Z-27, Z-28, and Z-29.*
37. As required by WSDOT, the right-in/right-out turning restriction at the site driveway would be enforced with "C" curbs. *Victor Salemann Testimony.*
38. The City has a planned capital improvement to widen NE 51st in the project area. This would result in the addition of a center two-way turn lane along the property frontage and through the 154th Avenue intersection. *Exhibit Z-4; Testimony of Min Luo and Victor Salemann.*
39. Northeast 51st Street is classified as a minor arterial and has a posted speed limit of 35 miles per hour. *Exhibit Z-39.* The stopping sight distance at the site driveway meets the City standard of 360 feet for vehicles approaching from the west and the east. Entering sight distance for vehicles approaching from the west is inapplicable because left turns into the driveway would not be allowed. The entering sight distance for vehicles approaching from the east would be 300 feet, which is less than the 500 feet required by RZC 21 Appendix 2(A)(7)(c) for a road with a design speed of 45 miles per hour; design speed is based on posted speed limit plus ten miles per hour. However, with relocation of a transit stop, the entering sight distance would increase to 430 feet, which would satisfy AASHTO³ standards. The City Engineer approved a deviation from the City entering sight distance standard on January 17, 2017, on condition that the vegetation within the sightline would be pruned, and the bus shelter relocated to the east. The Applicant would be responsible for the pruning and relocation, unless the City's planned street widening project begins construction first, in which case the City would relocate the bus shelter. *Exhibits Z-33 and Z-34.* It would not be feasible to satisfy the City's 500-foot entering sight distance standard, as it would require major improvements to NE 51st Street's horizontal and vertical curves. *Min Luo Testimony.*
40. The Applicant collected traffic data at Kirkland AEB during the evening peak period on three dates both during and outside of Ramadan in June and July of 2017. For a Ramadan typical prayer service, the peak hour was 8:00 to 9:00 pm, and there were 24 trips. For a non-Ramadan typical prayer service, there were 17 trips. For the last Friday of Ramadan, the peak hour was 8:30 to 9:30 pm, and there were 40 trips. For a Sunday evening community event, which included both a prayer service and community gathering, the peak hour was 9:45 to 10:45 pm, and there were 22 trips. *Exhibit C-12 (TSI July 2017 and November 2017 Technical Summaries).*

³ American Association of State Highway and Transportation Officials

41. Because evening prayer services – which are the most attended prayer services - commence after sunset, the mosque's peak hour varies throughout the year. During the summer, evening prayer services generally occur between 8:00 pm and 10:00 pm, whereas during the winter, they generally occur between 4:00 pm and 6:00 pm. *Exhibit C-12, TSI July 2017 Technical Summary.*
42. Using the traffic data from the Kirkland facility gathered by Traffic Count Consultants and by TSI and that included counts of both vehicles and vehicle occupants entering the facility, the Applicant's engineer established a trip generation rate based on the community size of 150 people and applied this rate to a projected community size of 160 people, conservatively reflecting a 5% rate of growth, although the actual rate of growth within the community has been flat. With projected growth, typical evening prayer would generate 18 use-specific-peak hour (i.e., peak for the use, but not necessarily during the typical peak hour of 4:00 to 6:00 pm) trips, a Ramadan prayer service would generate 26 peak hour trips, a community gathering would generate 24 peak hour trips, and a major event such as the last Friday in Ramadan would generate 43 peak hour trips. Strictly addressing the PM peak hour that is the reference for traffic study in the ITE manual adopted by the City, the Applicant's revised traffic study projected 18 new PM trips during the typical weekday for evening prayers. However, this does not translate into 18 PM peak hour vehicle trips; for example, over the course of the year 2018, evening prayer commencement times coincide with PM peak hour traffic on only 94 days of the year, and prayer services do not happen every day.⁴ *Exhibit C-12, TSI July and November 17 Technical Summaries.*
43. If traffic were generated based on ITE trip generation rates, the projected traffic impact of the development would be much higher than the calculation based on community size. The ITE rates for mosques are based on one data point (a 7,000-square-foot building in Canada). The rates are expressed as a function of gross floor area. If the rates were applied to the proposed 22,657-square-foot mosque, the trip generation would be 37 during the am peak hour (6:00 am – 7:00 am), 250 during the PM peak hour (7:30 pm – 8:30 pm), and 416 during the Friday peak hour of 12:15 pm – 1:15 pm. If the ITE rates applicable to churches were applied instead of those applicable to mosques, which are also based on gross floor area, the trip generation would be 20 during the am peak hour (10 am – 12 pm), 21 during the pm peak hour (7 pm – 11 pm) and 273 during the Sunday peak hour (9 am – 1 pm). *Exhibit C-12, TSI November 2017 Technical Summary.*
44. The evidence that it would be inappropriate to determine vehicle trips based on facility size is credible. The existing Kirkland AEB utilizes a 2,300 square foot multipurpose space. The fact that the proposed facility would be ten times larger does not mean that there would be ten times the traffic impact; instead the various mosque activities would have their own designated spaces. The Applicant's transportation engineer credibly concluded that “community size, which can be related to maximum attendance, provides

⁴ Aside from Saturday school, prayer service and event dates are based on the lunar calendar and evening prayer services (the most attended service outside of Ramadan and Muharram) begin after sunset, which means traffic to even prayers varies based on time of year. *Exhibit C-12; Ali Haveliwala Testimony.*

a more measurable relationship to trip generation than building area for a “mosque” use.” *Exhibit C-12, TSI November 2017 Technical Summary; see also Victor Salemann Testimony.*

45. The Applicant’s transportation engineer also considered the traffic generation of two other mosques – the Islamic Center of Mukilteo and the Islamic Community Center of Redlands. Applying the community size rate used in those studies and averaging the results between all three studies yielded an evening PM peak hour trip generation of 62 trips. With 62 trips, the project site intersection would operate at level of service (LOS) B. *Exhibit C-12, TSI November 2017 Technical Summary.*
46. WSDOT did not comment on the Applicant’s most recent traffic analysis, which was prepared in November 2017 in response to WSDOT comments. *Exhibit C-12; Victor Salemann Testimony.*
47. Appellant witnesses testified about current traffic congestion on 51st Avenue, which they drive daily. Specifically addressing the proposed site entrance, they stated that in AM hour, heavy traffic flows, but in the PM hour, traffic is stuck. The degree of delay fluctuates with time of year depending on whether school is in session. There is a bus stop at SR- 520 that draws a lot of pedestrian traffic from nearby apartment complexes on 156th. There is a new cross walk across 51st Avenue and the street is used by bicycles and pedestrians. Neighbors testified that they try not to leave their house after 4 PM, because it can be really hard to get into and out of their property during PM peak traffic. Trips that used to take 10 minutes now take 30 minutes. Due to visibility and congestion, Mr. Zakhareyev testified that his family no longer makes left turns from 51st onto 154th, instead opting for routes that allow right turns onto their street. *Eugene Zakhareyev Testimony; Hans Gundersen Testimony.*
48. The Appellant offered traffic testimony from transportation engineer William Popp, PE., who was retained to evaluate the traffic and parking studies submitted by the Applicant and related documents. Mr. Popp identified several areas in which he questioned the methodology and/or conclusions of the studies with respect to traffic, including:
 - There are unaddressed inconsistencies between the Applicant’s Jake Traffic Engineering (JTE) and TSI reports;
 - TSI should have used a full year of traffic data from the existing Kirkland facility instead of three days;
 - The Mukilteo and Redlands mosques are planned – not existing – developments, and are not affiliated with Dawoodi Bohra; the Applicant should have considered traffic generation from existing Dawoodi Bohra mosques elsewhere in the country;
 - The Applicant's traffic studies do not consider a sufficient number of events;
 - The large building size should be considered in traffic generation;
 - Traffic surge should have been considered in determining project LOS, such that if the peak hour trips are expected to occur within a 15-minute window, for example,

- the estimated trips should have been multiplied by four to determine the full hour LOS;
- The Applicant's engineers did not do a trip distribution analysis; and
 - The Applicant's proposed trip routings are not intuitive and the result of the right-in/right-out driveway will be significant numbers of U-turns at the intersection 154th Avenue NE to the east of the subject property, which will not be safe due to the road's curves.

Exhibit Z-1; William Popp Testimony. Appellant's transportation engineer did not conduct any independent traffic analysis and did not assert that the streets in the area lack capacity for projected trip volumes. He opined that the project would be new, large, and aesthetically pleasing and would therefore draw new congregation members. *William Popp Testimony.*

49. The Applicant traffic engineer testified that the three days of AEB-specific traffic counts relied on in the TSI peer reviews of project traffic were a more appropriate assessment of actual impacts from the project than the one year of available data the Appellant preferred, because religious facilities, like schools, have impacts that are more people based than vehicle based. *Victor Salemann Testimony.*
50. The City found the Applicant's use of three days of Kirkland AEB data (instead of a full year of data) to be reasonable because they focused on peak attendance, and therefore provide more conservative numbers. The City's transportation engineer is satisfied that the analysis provided in the Applicant's studies complies with City standards for traffic study. Because the volume of PM peak hour traffic would not exceed 20 trips, the Applicant was not required to study intersections other than the site access intersection. *Min Luo Testimony.*
51. While U-turns are currently allowed at the intersection 154th Avenue NE and NE 51st Street, the City has authority to post the intersection with signs prohibiting U-turns if U-turns become excessive. *Min Luo Testimony.* The Applicant has no objection to the City making U-turns prohibited there. *Victor Salemann Testimony.*
52. Washington State Department of Transportation (WSDOT) collision data at the intersection of NE 51st Street and 154th Avenue for the five-year period of January 2011 through December 2015 was evaluated in a traffic operations assessment performed by the firm TENW. The TENW study found that within the five-year period there were four collisions (none involved U-turns by eastbound traffic). Both the City and the Applicant transportation engineers concluded that such a collision rate was too low to warrant further analysis. *Exhibit Z-4; Min Luo Testimony; Victor Salemann Testimony.*
53. Stopping sight distance on NE 51st Street at the 154th Avenue intersection based on the posted speed limit of 35 miles per hour satisfies City standards. The assumed design speed of 45 miles per hour is not representative of actual traffic speeds in the corridor, as the 85th percentile speed is only 33.8 miles per hour. *Exhibit Z-4; Min Luo Testimony.*

54. The Applicant submitted a map depicting driving routes to the site that would not require a U-turn at the intersection of NE 51st Street and 154th Avenue for travelers approaching from the west, and proposes to make route maps available to members. The routes would require taking either NE 40th Street or NE 60th Street east to 156th Avenue NE, and then traveling west on NE 51st Street from 156th Avenue NE. The Applicant's traffic expert noted that while first time visitors may experience accessing the requires a "non-intuitive route, repeat attendees would have the chance to learn which routes work best at which times of day for the services they attend. He also noted that generally religious facilities typically provide parking and travel route information to members perhaps on-site at a kiosk, or more often on their website. The facility would be able to update this advice to members as roads and traffic change over time in the project vicinity. Event announcements can easily include travel route recommendations. *Exhibit C-12; Victor Salemann Testimony*. The City does not require evaluation of driving routes based on actual member addresses. *Min Luo Testimony*.
55. The intersection of NE 51st Street and 154th Avenue, which is currently two-way stop controlled, only meets one of four relevant warrants for a signal. In the intersection's current configuration, traffic operations along the NE 51st Street corridor would be adversely affected by a signal due to the short distance to nearest existing signalized intersections. However, with the addition of a center turn lane, the addition of a signal might be feasible. *Exhibit Z-6; Victor Salemann Testimony*.

Guest Apartment (Issue 7)

56. The proposed parsonage would consist of a combined living room/kitchen, three bedrooms, and two bathrooms on the upper floor level, plus a living room, bedroom, and bathroom on the main floor. The main floor rooms are referred to in a pre-application project narrative as "a small apartment for visiting clergy." *Exhibit Z-53*. These guest quarters would likely only be used twice per year, for one to two weeks per visit. *Ali Haveliwala Testimony*.
57. On April 29, 2015, the City Planning Director issued an Administrative Interpretation that a parsonage is an accessory use to a place of worship. *Exhibit C-14*. The Appellant does not dispute the interpretation but argues that a guest apartment is not allowed in the R-5 zone and is not an accessory use to the mosque. *Document 17*.
58. The City submitted that the main floor residential rooms should be considered part of the parsonage accessory use and not a separate guest apartment, as the rooms do not include a kitchen. The RZC defines "dwelling unit" as a "single unit providing complete, independent living facilities for not more than one family and permitted roomers and boarders, including permanent provisions for living, sleeping, eating, cooking, and sanitation." *RZC 21.78; Document 22; David Lee Testimony*.

Scale, Bulk, and Neighborhood Character (Issue 8)

59. The design regulations applicable to the development are set forth in RZC 21.60.040. The criteria for building scale include:

- i. The apparent mass and scale of large buildings should be reduced through the use of modulation and articulation that provides a pedestrian scale and architectural interest....
- ii. Integration. Large buildings should integrate features along their facades visible from the public right-of-way, and pedestrian routes and entries, to reduce the apparent building mass and achieve an architectural scale consistent with other nearby structures.
- iii. Building facades visible from public streets and public spaces shall be stepped back or projected forward at intervals
- iv. Buildings shall be articulated to reduce the apparent scale of buildings....

RZC 21.60.040(B)(2)(b).

- 60. The project design has been thoroughly reviewed by City Staff and the Design Review Board. The record reflects that the project was first considered by the Design Review Board at the pre-application stage on July 18, 2013. The Board had numerous questions and comments, which the Applicant addressed through several design changes at a second pre-application Design Review Board meeting on August 22, 2013. The Design Review Board approved the design at a third meeting on April 6, 2017, after taking comments from members of the community, including the Appellant. *Exhibits Z-44 and C-9.*
- 61. The Design Standards Checklist to which the Applicant was required to respond addressed the detailed intent statements and criteria set forth in RZC 21.60 relating to design context, relationship to adjacent properties, relationship to street front, street design, transit, pedestrian and bicycle circulation, vehicle entrances and driveways, parking lot location and design, pedestrian plazas, pedestrian facilities and amenities, architectural concepts, building scale, rooflines, building details, materials and colors, multiple building design, blank walls, safety, landscape planting design, parking lot landscaping, screening for garbage and recycling enclosures, and storm water facilities. *Exhibit C-7.*
- 62. Through the design review process, the design of the proposed building was changed as a result of DRB feedback in the following ways: alterations that prevent the plans were a direct line of sight into neighboring properties from the roof deck; additional landscaping was added; modulation was achieved by adding a courtyard; additional windows were added to reduce the potential for a utilitarian, institutional appearance; and exterior color and materials were changed. The landscaping approved by the DRB included species planted in the setback between the project and the residences to the north that, when mature, will exceed the height of the mosque. All elements of the building foundation would be below the view line of these two adjacent residences, but the higher portions of the building would be visible until the landscaping matures. *Exhibits C-7, C-8, and Z-44; Sarah Pyle Testimony.*

63. Exhibit C-8 is the Applicant's design review submittal. While the details of the design are too numerous to describe in these Findings, some features are highlighted here.
- The building is essentially two buildings that are connected, with each oriented slightly differently on the property so that there is not a single, linear façade. This is most evident from the rear elevation, facing the adjacent residential uses.
 - The primary building material would be stucco, with EIFS (exterior insulation finish system) trim.
 - The building would incorporate numerous features to provide modulation and articulation, including projecting roof features above the main level along the southwest corner of the building and along the east side of the building, a columned entry portal, and unique window detailing. The roofline would be flat, but the eastern building component would incorporate an historical crenellation motif.
 - Landscaping including a mixture of deciduous and evergreen trees and hedges would be installed around the site perimeter, within the parking lot, and along the building elevations. A row of larger trees, intended to exceed the height of the building when mature, would be installed along the north property line between the proposed use and existing residential uses. A six-foot fence would provide screening of the building foundation as viewed from properties to the north (which are at a lower elevation).

Exhibits C-7 and C-8; Sarah Pyle Testimony.

64. The Appellant argued that in approving the design, the City failed to take into account scale, bulk and neighborhood character, citing Comprehensive Plan policies LU-9, LU-30, OV-11, and OV-12, the definition of "neighborhood character" contained in the RZC, and the Overlake Business and Advance Technology (OBAT) zoning regulations. The Appellant submitted evidence showing that the proposed mosque is substantially larger in scale and different in design than the residences to the north and east, which are mainly split-level design and not exceeding approximately 3,000 square feet in area. The Appellant submitted that the scale of the building is more similar to the Microsoft buildings on the south side of NE 51st Street. *Exhibits C-2; Document 17.*
65. Tom Flick, owner of adjacent residential parcels to the north, testified that the project as approved would impact his property values and his ability to retain renters. His primary concerns with the design are the rooftop deck with capacity for nearly 50 people, window size, the stucco finish, and the exterior coloring, which he argued are not consistent with development in the neighborhood. He contended that other buildings in the neighborhood are wood clad, with asphalt shingle roofs, around 45 feet wide, 25 feet tall, and look nothing like the proposal. He was concerned that the territorial view from that rooftop will be into neighborhood yards and homes. *Tom Flick Testimony.* Appellant Eugene Zakhareyev echoed Mr. Flick's concern that the size and design of the building would be inconsistent with existing development and would therefore have property value impacts. *Eugene Zakhareyev Testimony.*

66. The City submitted that the Design Review Board considered neighborhood character, scale, and massing. Planner Sarah Pyle testified that styles and building materials evolve over time and as an example noted that newer homes tend to be taller than older housing stock and to have slanted, shed, and butterfly roofs instead of the more traditional looking high-pitched roofs. *Sarah Pyle Testimony.*

Conditioning Project on Building Capacity (Issue 9)

67. The Appellant argued that the City erred by not conditioning the application on overall building capacity, instead of only on the seating capacity of the prayer areas, as the mosque would provide for other uses (classes, events) that might generate more traffic or parking demand. The Appellant did not identify any sections of the RZC that would require such limitation but cited the purpose statement of the SPE review process, which requires consideration of the adequacy of streets and utilities to serve anticipated demand. *Exhibit C-2; Document 17.*

Growth Projections (Issue 10)

68. The Appellant argued that the City erred by failing to incorporate growth projections into its review process but did not identify any provisions of the RZC requiring such use of growth projections. The Appellant argued that the project is already over capacity, as there are 147 seats and 150 members. *Exhibit C-2.*

High Capacity Transit Corridor Setback (Issue 11)

69. Chapter 21.28 of the RZC contains High Capacity Transit Corridor Preservation regulations, which are designed to support the extension of light rail as part of Sound Transit's East Link Light Rail project, prevent encroachment of structures into a future transit corridor, and improve transportation mobility. *RZC 21.28.010(A)*. These regulations apply "to all properties crossed by or entirely behind transit-related setback lines shown in the High Capacity Transit Corridor Preservation Map Book or its successor, adopted by this reference and on file in the Development Services Center." *RZC 21.28.020(A)*. When the regulations apply, they prohibit new structures between the property line and the transit-related setback line. *RZC 21.28.030.*
70. The subject property is wholly outside of the High Capacity Transit Corridor Setback as depicted in the adopted High Capacity Transit Corridor Preservation Map Book, dated April 16, 2011. *Exhibit Z-76; Min Luo Testimony.*
71. Sound Transit's preliminary Downtown Redmond Link Extension Conceptual Design Drawings dated July 30, 2018 depict a proposed noise wall, drainage and tree trimming easement along the west property line, which would encumber 718 square feet of the southwest corner of the property, in an area proposed to be occupied by landscaping and a driveway; no proposed structures would be impacted if the sound wall were built as depicted in these drawings. A temporary construction easement in the same area would encumber 2,091 square feet. The maximum total width of the easements would be 20 feet. *Exhibits R-6 and R-16.* The subject property appears on a list of parcels authorized for acquisition of easements for the project that was adopted by Sound Transit through Resolution No. R2018-14 on May 24, 2018. *Exhibit Z-97.* However, the Conceptual

Design Drawings are 5% drawings, and there might be changes to the plans that eliminate encroachment. The City submitted that in the event that the light rail project occurs first and requires an easement from the Applicant, the Applicant would be required to adjust the site plan. *Exhibit C-1; David Lee Testimony.*

CONCLUSIONS

Jurisdiction:

Pursuant to Redmond Zoning Code (RZC) 21.76.050 and RZC 21.76.060.I, Technical Committee decisions are Type II decisions that are appealable to the Hearing Examiner.

Criteria for Review of the Appeal:

Pursuant to RZC 21.76.060.I.4, the Hearing Examiner shall issue a written decision to grant, grant with modifications, or deny the appeal. The Hearing Examiner shall accord substantial weight to the decision of the Technical Committee. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type II decision is not supported by a preponderance of the evidence or was clearly erroneous.

In this case, the Type II decision is a site plan entitlement, which requires compliance with SEPA and the RZC. *RZC 21.76.070.Y (a).*

In determining whether an appellant has met the burden of proof, Courts have held that an administrative agency's action is clearly erroneous when it leaves the reviewing [authority] with the "definite and firm conviction that a mistake has been committed." *Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 894, 83 P.3d 433 (2004). When applying the clearly erroneous standard, the Hearing Examiner must not substitute her own judgment for the judgment of the agency. *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994).

Conclusions Based on Findings:

1. Issues 3 and 5: The Appellant has not carried his burden of proving that the Technical Committee's determination on parking was unsupported by a preponderance of the evidence or was clearly erroneous. The zoning code, at RZC 21.08.080.C, sets forth the parking standard that applies to religious institutions in the R-5 zone. This standard requires a minimum of one parking space per 1,000 square feet gross floor area for assembly or one parking space per five "fixed seats," and specifies a maximum of one parking space per three "fixed seats." The Applicant proposes to permanently demarcate prayer rug placement on the floor within the prayer areas; there is no dispute as to the number of prayer rugs spaces proposed and the number of proposed seats is known with certainty. The City determined that these markings would constitute "fixed seats" for calculating the parking requirement. This is a reasonable interpretation of the fixed seat requirement, even in light of the seating capacity calculation specified in RZC 21.08.280, and is consistent with past interpretations. While the interpretation offered by the

Appellant may also be a reasonable interpretation, the Appellant's arguments were not sufficiently convincing that the Hearing Examiner finds the City's decision was clearly erroneous.

The Appellant's arguments regarding the applicability of "adequate to accommodate peak use" language for assembly uses are not persuasive. The Appellant urges the decision maker to ignore an explicit parking requirement for religious uses in the zone in favor of the language used to describe the parking required of other listed uses such as community indoor recreation. If the City intended religious institutions in the R-5 zone to provide parking "adequate to accommodate peak use," it would have so specified, as it did for the other uses. Also, the RZC does not specify which uses are "assembly uses," and does not reference the IBC for interpretation. Further, to adopt the Appellant's proffered interpretation would render RZC 21.08.280.C.5's express authorization for off-site parking in excess of the maximum superfluous. The more reasonable interpretation is that the "parking regulations for assembly uses" refers to the first requirement in RZC 21.08.080.C, which requires a minimum of one space per 1,000 square feet. To the extent that the Appellant's argument raises a valid claim of ambiguity as to how which seating calculation should be applied to the proposal (which this conclusion does not hold), deference would be due to the interpretation of the City's Technical Committee. The City's interpretation on this matter was not clearly erroneous. *Findings 2, 4, 7, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.*

2. The record submitted does not show that the Technical Committee's determination on building setbacks was unsupported by a preponderance of the evidence or was clearly erroneous. The City's interpretation is consistent with RZC 21.08.280.D(1)(c) in that at heights in excess of 30 feet, the building (i.e., the portion of the building exceeding the height limit) would be set back five feet for every foot of height over 30 feet. The authorities cited by the Appellant do not mandate a different result. While the Appellant's interpretation of RZC 21.08.280.D(1)(c) is plausible in the abstract, it results in an absurd result as applied to this development proposal. The City's interpretation, in contrast, is protective of adjacent properties while accommodating the unique architectural features of religious facilities. Giving substantial weight to the City's interpretation, the Hearing Examiner concludes that the City's decision was not clearly erroneous. *Findings 2, 3, 4, 7, 10, 29, 30, 31, 32, 33, and 34.*
3. The Appellant has not carried his burden of proving that the Technical Committee's review of traffic impacts was unsupported by a preponderance of the evidence or was clearly erroneous. Consistent with the intent of the SPE review process, the evidence supports that the adequacy of streets and site access were appropriately reviewed. The mosque use is unique in the population it is intended to serve, and the Applicant's traffic engineer provided cogent reasons for using the trip generation methodology selected (community size instead of building size), and the use of the three specific days of data (to capture peak traffic). The resulting traffic volume did not require a trip distribution analysis. With the mitigation required by the SPE approval, entering and stopping sight distance would be adequate. Collision data for the intersection of 154th Avenue to the east does not suggest that there are significant hazards. The issue of U-turns can be

addressed by the City if and when they are shown to be a problem. In short, the record contains no traffic data that refute those forwarded by the Applicant and accepted by the City. The Appellant traffic witness's differences of professional opinion regarding the adequacy of Applicant's traffic reports and the City's analysis were not sufficiently compelling to satisfy the burden of proof. *Findings 2, 3, 4, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55.*

4. The record submitted failed to show that the Technical Committee's determination on the "guest apartment" portion of the parsonage is unsupported by a preponderance of the evidence or was clearly erroneous. The guest rooms are not a separate dwelling unit, but a part of the allowed parsonage. No conflict with applicable RZC provisions is shown. *Findings 2, 4, 7, 10, 56, 57, and 58.*

5. The Appellant did not meet his burden of showing that the Technical Committee's determination on design was unsupported by a preponderance of the evidence or was clearly erroneous. The Appellant's argument on design is, in essence, that the mosque should be denied because it is larger than and does not look like the single-family residences in the neighborhood to the north and east of the subject property. This argument is at odds with the Churches, Temples, Synagogues, and Other Places of Worship section of the Residential Regulations chapter of the RZC. These regulations acknowledge that places of worship have unique impacts (RZC 21.08.280.A) and specifically allow for deviation from the maximum building height for symbolic architectural features. If the intent of the regulations was to ensure that houses of worship look no different from residences, special provision for symbolic features and excess height would not be provided. Further, the regulations and Comprehensive Plan policies the Appellant cites in support of the argument are not persuasive. The Comprehensive Plan policies cited by the Appellant (e.g., LU-9, LU-30, OV-11) speak to "maintaining regulations" that address neighborhood character, bulk, and scale. These do not have a direct regulatory effect on the proposed development. Of note, also in the vicinity are large commercial structures that are part of the Microsoft campus and the freeway interchange. The adopted regulations do not prohibit the proposed design. Consistent with the applicable design criteria, the Applicant has incorporated modulation and articulation to reduce the "apparent mass and scale of large buildings" and has integrated features in the façade visible from the street and adjacent residential parcels to reduce apparent building mass. The City reviewed the design against a detailed design checklist, and the Design Review Board approved the design after multiple design meetings. The cited OBAT zone regulations, which apply to the property to the south of the subject property, are not relevant to this application. The Appellant has not met his burden of proof on the design issue. *Findings 2, 3, 4, 7, 10, 59, 60, 61, 62, 63, 64, 65, and 66.*

6. The record presented does not show that the Technical Committee's determination was clearly erroneous or unsupported by a preponderance of the evidence for failure to review or condition the project on overall building capacity. The Appellant cited the purpose statement of the SPE review process in support of his argument that overall building capacity should be considered. This includes ensuring that site plans are reviewed for

“the adequacy of streets and utilities in the area of the subject property to serve the anticipated demand for the proposal” and a “determination that the proposed access to the subject property is the optimal location and configuration for access.” *RZC 21.76.070.Y*. Beyond the fact that parking for religious institution uses is explicitly addressed in another use-specific provision, one difficulty with this argument is that the metrics associated with demand – parking and traffic – do not require consideration of the entire building area. The City’s calculation of parking based on fixed seats and review of traffic based on community size was not clearly erroneous. *Findings 4, 8, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 67*.

7. The Appellant has not carried his burden of proving that the Technical Committee’s determination was clearly erroneous or unsupported by a preponderance of the evidence for failure to consider growth projections. The Appellant did not identify any RZC provisions that would require the City to consider growth projections. The only provision the Hearing Examiner is aware of that is related to growth is the purpose statement for the SPE review process, which includes ensuring that site plans are reviewed for “the adequacy of streets and utilities in the area of the subject property to serve the anticipated demand for the proposal.” *RZC 21.76.070(Y)*. In this case, a growth projection of 5% was included in the traffic analysis for the project. Credible evidence was submitted that a 5% growth projection is adequate for the congregation given historic flat growth levels. The Appellant did not provide any project-specific evidence to the contrary. If the concern is unmitigated impacts associated with uncontrolled growth, the seating capacity of 147 serves as a check on growth. If the congregation grows beyond its seating capacity, then it will need to seek additional City approvals. *Findings 2, 4, 5, 8, 19, 20, and 68*.
8. The Appellant has not carried his burden of proving that the Technical Committee’s determination on High Capacity Transit Corridor Preservation requirements was unsupported by a preponderance of the evidence or was clearly erroneous. The City complied with the regulations in that the subject property is outside of the setback line shown in the adopted Map Book. The City correctly declined to require compliance with preliminary plans to the contrary, particularly where, due to the relatively minor potential impact, it appears likely that any future encroachment issues could be resolved. *Findings 2, 3, 69, 70, and 71*.

DECISION

Based on the preceding findings and conclusions, the appeal is **DENIED**. The Appellant did not satisfy his burden of proof to show that the City's approval of SPE LAND-2013-00171 was unsupported by a preponderance of the evidence or was clearly erroneous.

Decided October 8, 2018.

By:



Sharon A. Rice
City of Redmond Hearing Examiner