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BEFORE THE REDMOND HEARING EXAMINER

IN THE MATTER OF THE APPEALS OF
WPDC Cleveland LLC
of approved Building Permit authorizing
alternation to the structure at 16390 Cleveland
Street, Redmond

NO. BLDG-2016-09802 - BPLN-2016-02092

CITY OF REDMOND'S PREHEARING
LEGAL BRIEFING

I. INTRODUCTION - SCOPE OF BRIEFING

This matter comes before the Hearing Examiner as a result of WPDC Cleveland, Inc.'s ("Appellant") revised appeal of the City approval of a building permit for Andorra Ventures LLC's ("Applicant") project at 16390 Cleveland Street in the City of Redmond (the "Project"). This appeal, and consequently the City's legal briefing, is strictly limited to review of the City's approval of the building permit and associated revision application discussed below. The City's staff report is incorporated by reference here.

II. ISSUES

- 1) Whether "expert" testimony including legal conclusions should be excluded from the appeal. **YES.**
- 2) Whether the City's approval of a building permit application with associated change in occupancy form as well as a revision application resulted in a change in use to marijuana retail sales? **NO.**
- 3) Whether the use and structure retain legal nonconforming status? **YES.**

1 4) Whether the approved project required land use review? **NO.**

2 **III. ARGUMENT**

3 **1) Appellant's Burden on Appeal.**

4 "The Hearing Examiner **shall** accord **substantial weight** to the decision of the department
5 director" on Type I decisions. RZC 21.76.060(I)(4). The substantial weight standard is a very steep
6 hurdle for Appellant to jump over. The evidence will show that while Appellant may desire to tell a
7 compelling story, Appellant cannot overcome the substantial deference that must be given to the
8 director's decision.

9 Further, The Hearing Examiner may only grant the appeal if the Examiner determines that the
10 appellant has carried the burden of proving that the Type I decision is **not supported by a**
11 **preponderance of the evidence or was clearly erroneous.** RZC 21.76.060(I)(4).

12 The preponderance of the evidence standard is viewed through the lens of the director at the
13 time the decision was made. It would be improper on appeal to flood the record with new evidence
14 and then claim that the director's decision is not supported by the newly enlarged record of evidence.
15 The director reviewed the evidence available at the time the decision was made and determined that
16 the building permit should be issued. The director's decision on that evidence must be afforded
17 substantial weight.
18

19 Further, a decision is clearly erroneous only when the hearing examiner is left with the definite
20 and firm conviction that a mistake has been committed. *See W. Main Associates v. City of Bellevue,*
21 *49 Wn. App. 513, 520, 742 P.2d 1266 (1987)* (referencing the "clearly erroneous" standard for
22 appellate review of the denial of a building permit on SEPA grounds.) The Appellant cannot simply
23 point to another interpretation or ask a completely uninvolved "expert" to make their own decision.
24 The Hearing Examiner must view the decision in the context in which it was made and be overcome
25 with the definite and firm conviction that the director made a mistake. Appellant will be unable to
26 make any such showing and any testimony should be strictly confined to such task.
27
28

1 **2) The Department Director has the Final Decision-Making Authority on Type I Decisions**

2 Table 21.76.050B shows that building permits, like that which is at issue in this appeal, are
3 Type I decisions. The department director (or his/her designee) may consult with the Technical
4 Committee, the Design Review Board, or the Landmarks and Heritage Commission on any Type I
5 application, but the final decision-making authority on such applications remains with the department
6 director. RZC 21.76.060(D)(2). Therefore, the subject building permit did not require any additional
7 review by anyone other than the department director, or staff as designated. Further, the administrator
8 has design review authority on all building permit applications that have a total valuation of less than
9 \$50,000. RZC 21.76.020(E)(3)(c). The value of the building permit for exterior improvements, both
10 originally and as revised, was lower than \$50,000. *See* City Exhibits 3 and 6. City staff reviewed the
11 values submitted by Applicant when they were submitted and determined that they were acceptable.
12 As such, design review is squarely before the department director.

13
14 **3) The Hearing Examiner Should Exclude Improper “Expert” Testimony and Evidence.**

15 Appellant seeks to introduce the opinions of Mr. Settle through admission of his summary of
16 opinions (Appellant’s Exhibit 16) and by using him as an “expert” witness. Appellant’s intended
17 course of action with regards to Mr. Settle is flatly prohibited by the rules of evidence. Mr. Settle’s
18 summary of opinions plainly outlines his conclusions as to what the law is and how the factual
19 assumptions he was provided fit the law. It even includes legal citations and analysis of code as if it
20 were a legal brief.

21 Under ER 702, if specialized knowledge will assist the trier of fact to understand the evidence
22 or to determine a **fact** in issue, a witness qualified as an expert by knowledge, skill, experience,
23 training, or education, may testify thereto in the form of an opinion or otherwise. While an expert
24 witness's testimony can embrace an ultimate issue for the trier of fact to determine, a witness may not
25 give legal conclusions. *State v. Olmedo*, 112 Wn. App. 525, 532–33, 49 P.3d 960 (2002); *Hyatt v.*
26 *Sellen Constr. Co.*, 40 Wn. App. 893, 898–99, 700 P.2d 1164 (1985). “Improper legal conclusions
27 include testimony that a particular law applies to the case, or testimony that the defendant's conduct
28

1 violated a particular law.” *State v. Olmedo*, 112 Wn. App. 525, 532, 49 P.3d 960 (2002) (citing *Hyatt*
2 *v. Sellen Constr. Co., Inc.*, 40 Wn. App. 893, 899, 700 P.2d 1164 (1985)).

3 Mr. Settle’s summary of opinions is not legal argument contained in a pre-hearing brief, it is
4 intended to be substantive evidence and testimony submitted at the appeal hearing. None of the
5 opinions seek to assist in the understanding of evidence or to determine a **fact** at issue. Instead, the
6 opinions consist of legal analysis and legal opinions as to what the code says, how the code works,
7 and how the law applies to the factual assumptions provided to him – with legal citations no less.
8 None of this is permissible and it should all be excluded.

9 Further, the summary of opinions fails to state what pleadings, relevant evidence, and factual
10 assumptions Mr. Settle considered when making these opinions. The opinions include references to
11 things such as “the addition of marijuana retail sales use,” which we know was not part of the building
12 permit that is at issue in this appeal. The ambiguity of the foundation for these opinions necessitates
13 exclusion of the summary of opinions as an exhibit.

14 Finally, with all due respect to Mr. Settle’s experience and accomplishments, reviewing a
15 limited set of materials/assumptions and the City’s code for this appeal hardly makes someone an
16 expert code interpreter for the Redmond Municipal Code – not that such an expert is permissible in
17 any circumstance. Should Appellant wish to make legal argument and assertions as to the proper
18 application of the law to the facts at issue, Appellant can and should limit those legal conclusions and
19 opinions to the pre-hearing briefing. Attempting to use a legal expert to sway the Hearing Examiner’s
20 own legal review is improper and should not be allowed.

21 22 **4) A Change in Use to Marijuana Retail Sales is Not at Issue in This Appeal.**

23 Nearly all of the Appellant’s appeal is based on the incorrect assumption that the City’s
24 approval of the building permit resulted in a change of use for the property to marijuana retail sales.
25 Appellant describes this as the “unlawful siting of a retail marijuana establishment on the project site.”
26 See City Exhibit 2, p.9. Appellant’s Errors of Procedure, Fact and Law numbers, 2, 3, 4, 5, 6, 7, 8, 9,
27 10, 12, 13, 14 all reference and commingle the unsubstantiated and misplaced allegation that there has
28 been a change in use to marijuana retail sales. City staff will testify that (1) the City has taken no

1 action that would approve a change in use to marijuana retail sales, and (2) consequently, the City
2 has not approved a marijuana retail sales use at the project site. The City received two applications
3 from Applicant upon which it took action: a building permit application with associated change in
4 occupancy form as well as a revision application. Neither application decision resulted in an approval
5 for a change in use to marijuana retail sales. Only those decisions are before the Hearing Examiner
6 and neither resulted in a change in use.

7 Appellant has no evidence to contradict this very clear and very straightforward reality. As
8 such, any and all testimony related to marijuana retail sales, a change of use to marijuana retail sales,
9 city requirements for marijuana retail sales, etc. must all be precluded at the outset of the hearing
10 before it is overrun (like the Appellant's briefing was) with irrelevant and time consuming issues
11 unrelated to the proper remaining issues on appeal.

12 The City would propose making an offer of proof on this discrete issue at the outset of the
13 hearing with a follow up response opportunity for the Appellant. The uncontroverted testimony will
14 establish that the City has made no decision that changed the use of the site to marijuana retail sales.
15 Following that showing, the City asks that the Hearing Examiner issue an order limiting the scope of
16 Appellant's case such that no discussion, evidence, or testimony related to marijuana retail sales or a
17 change in use to marijuana retail sales be allowed for the duration of the hearing. Those issues are
18 simply not properly before the Hearing Examiner and it would be improper to allow such testimony
19 to creep into this appeal.

20
21 **5) "Occupancy" and "Use" are Distinct Terms with Distinct Applications.**

22 It is clear that the terms "occupancy" and "use" have been commingled and treated as
23 interchangeable at various times by the applicant, the City, and the Appellant. There have been a great
24 number of communications regarding this project and prior proposed projects at this site that have
25 attempted to discuss the *use* and *occupancy* of the structure. Many of those communications have
26 conflated the terms, which resulted in confusion. However, the scope of this appeal is limited to the
27 City's decision on a building permit application with associated change in occupancy form as well as
28 a revision application, all of which were properly limited in scope. *See* City's Exhibits 3, 4, and 7.

1 The City would urge the Hearing Examiner to hold all parties to a strict standard of both
2 referring to the use and occupancy accurately and to avoid allowing prior misstatements to muddy the
3 waters and distract from the true scope of this appeal.

4 The term “occupancy” is a classification used by the City within the building code while the
5 term “use” is a classification relied upon by the City in the land use code. “Occupancy” and “use” are
6 distinct terms that cannot be conflated.

7 Redmond Municipal Code (“RMC”) Section 15.08 incorporates the International Building
8 Code (2015) (“IBC”). *See* RMC 15.08.020. IBC Section 302 outlines the occupancy classifications
9 available to the City. Changes in occupancy are specifically addressed in IBC Section 101.4.7 (as
10 amended in RMC 15.08.050(2)). That code section then references the International Existing Building
11 Code (2015) (“IEBC”). (“The provisions of the International Existing Building Code shall apply to
12 matters governing the repair, alteration, change of occupancy, addition to and relocation of existing
13 buildings.”) IEBC Section 1012 outlines the procedure the City follows for changes of occupancy
14 classification. The change of occupancy submitted with the original building permit was governed by
15 this code section.

16 Importantly, the occupancy classifications listed in IBC 302 do not include the original *use*
17 (general sales or service) or the alleged and unproven new *use* (marijuana retail sales). Therefore,
18 there can be no change in *occupancy* of the type claimed by appellant throughout the appeal document.
19 Discussions or issues on appeal related to occupancy must be focused on these code sections while
20 discussions of use (assuming they are relevant to the appeal) must be focused on the land use code, as
21 discussed below.

22 The City’s use designations are included in a completely different chapter of the code – the
23 Redmond Zoning Code (“RZC”). *See* RZC 21.04.030. RZC 21.04.030 includes a series of allowed
24 use charts that govern which uses are allowed in different zones. RZC 21.04.030C is the allowed use
25 chart that includes both the original use (general sales or service) and the alleged and unproven new
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1 use of marijuana retail sales¹. Therefore, because marijuana retail sales is a use designation not an
2 occupancy classification under the code, Appellant must prove that the City’s building permit approval
3 (the only thing being appealed) changed the land use designation. This is not possible because no
4 change in use was considered by the City or occurred as a result of the building permit approval or
5 change in occupancy approval at issue in this appeal.

6
7 **6) The Use and Structure Enjoy Legal Nonconforming Status.**

8 A legal nonconforming use is defined under the code as, “a use or activity that was lawful prior
9 to the adoption, revision or amendment of the zoning ordinance but that fails by reason of such
10 adoption, revision, or amendment to conform to the present requirements of the zoning district.” RZC
11 21.78 – Definitions. Legal nonconforming uses and structures may continue to be used and maintained
12 in accordance with the provisions of Chapter 21.76.100 of the Redmond Zoning Code. RZC
13 21.76.100(F)(4). The subject property enjoys legal nonconforming status because both the use and
14 the structure were lawful prior to any subsequent changes to the zoning code were made. As a result,
15 both the use and the structure are permitted to remain as allowed by the code.

16 The City’s historical understanding of the subject property is as follows: The subject property
17 was originally associated with the property located across the street at 16355 Cleveland Street. The
18 two parcels together were known as Western Farmers Association and it operated from the early
19 1900’s until the 1970’s when T&D Feeds purchased the properties. The subject building was an
20 accessory structure where product was stored and sold by Western Farmers Association and then
21 similarly for T&D Feeds. T&D Feeds stopped operations in 1999 and sold the property across the
22 street, which was then later redeveloped.

23 According to the information available to the City, during the life of the subject structure it
24 was designated for general sale and service uses. Further, the structure is in substantially the same
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26
27 ¹ Converse to that which is noted above, neither the original *occupancy* classification (S-Storage) nor the new *occupancy*
28 classification (M/B–Mercantile/Business) are land use designations included in the allowed use charts contained in RZC
21.04.030. Again, it is inconsistent with the code to conflate “use” and “occupancy” because they encompass different
classifications/designations and are governed by different chapters in the code.

1 form as it was during it's tenure with T&D Feeds and likely before. This is consistent with the
2 documented utilization of the property over the years.

3 For the time period following the closure of T&D Feeds the City of Redmond has no record of
4 any business license for the operation of a business at the subject site. Though, over the years there
5 have been discussions regarding the utilization of the site. In 2012 there was discussion that there may
6 be a tenant operating a business at the location without a City business license. However, in an effort
7 to ensure compliance with City Code, the Owner, Eric Hansen of Rain City Development, met with
8 the tenant and confirmed usage will conform to the zoning for the site and that the space will not be
9 used for auto repair, garage, self-storage, or mini-warehouse. *See* Appellant's Exhibit 50 (page 2 -
10 Email from Eric Hansen to Deborah Farris dated December 7, 2012.) That communication confirmed
11 that the space would be used by the tenant as an office for his auto hobby business. *Id.* Office and
12 auto sales and service are both uses properly included within the general sales and services use
13 designation.

14 Because the use and structure were approved prior to changes in the code, the use and structure
15 enjoy legal nonconforming status. The legal nonconforming status of the use and structure are
16 important because Appellant argues that that status was lost either by conduct of the prior owner (use
17 change, abandonment, or rebuild) or that the scope of the proposed project exceeds a code threshold
18 such that the entire site must be brought up to current code levels. Appellant cannot meet its burden
19 to prove either of these allegations.

20 *a. The subject site did not lose its legal nonconforming status.*

21 All rights to a legal nonconforming use are lost only if: (1) the use is changed, (2) the use is
22 abandoned for 12 months, or (3) the structure housing the nonconforming use is demolished or rebuilt.
23 RZC 21.76.100(F)(7)(a).

24 *i. The use has not changed.*

25 The use of the subject site has been, and continues to be, general sales and service. Historically
26 the site was used for the storage and sale of merchandise associated with the business that was also
27 located across the street. The entirety of the operation was viewed as a general sales and service use
28 by the City. In order to change the use the City would typically receive and review a business license

1 application for a new use. Since the closure of T&D Feeds the City has not received a business license
2 application and, consequently, never changed the use at the site. The apparent activities at the site of
3 a tenant doing auto-related business and/or office hobby work is consistent with the code definition of
4 general sales and service:

5 **General Sales or Services.** An establishment engaging in the retail sale, rental, or lease
6 of goods or the provision of services, including but not limited to automobile sales or
7 service; heavy consumer goods sale or service; durable consumer goods or service; the
8 sale or service of other consumer goods, grocery, food and beverage sales; health and
personal care services; finance and insurance services; real estate services; professional
services; administrative services; and restaurant and food services.

9 RZC 21.78 – Definitions. (Emphasis added.) From the City’s perspective, the general sales and
10 services use was not changed and remains for this site.

11 ii. *The use has not been abandoned for 12 months.*

12 The code states that all right to continue a nonconforming use is abandoned when the property
13 owner (a) intends to abandon its right to continue the nonconforming use or structure, and (b) there is
14 an overt act, or failure to act, on the part of the property owner which implies that the owner no longer
15 claims or retains any interest in the right to continue the nonconforming use or structure. RZC 21.78
16 – Definitions.

17 When reviewing the underlying building permit, the City was not aware of any intention of the
18 property owner to abandon its right to continue the nonconforming use and/or structure. In fact, the
19 City was aware that the prior owner rented the property to a tenant using it as an office and auto
20 business of some sort. The prior owner then attempted to rent the site to tenants who desired to open
21 a retail fruit stand. *See* Appellant’s Exhibit 50 (page 1 - Email from Jason Jones to Gary Lee on July
22 24, 2013 discussing desire to re-rent the property to a couple who wants to do a fruit stand in the
23 building.) This clear pattern of renting to tenants using the property for activities covered by the
24 general sales and service use definition shows no intention on the part of the property owner to
25 abandon its right to continue the nonconforming use. If anything, the owner’s desire to rent the
26 property to a business without making substantial landlord improvements to the structure first would
27 signal to the City the desire to maximize the rental opportunity without blowing the nonconformity.
28

1 Then, by following through and selling the site to Andorra for use as another general sales and service
2 use, the use remained consistent with the historical general sale and service use designation. Without
3 more information, the City's determination that the general sales and service use remained cannot be
4 said to be clearly erroneous or lacking substantial evidence.

5 Similarly, the City was not aware of any overt act, or failure to act, that would imply a desire
6 on the part of the owner to no longer continue the nonconforming use. As noted above, the attempt to
7 rent the property to two different tenants for uses that fall within the general sales and service use
8 designation coupled with the fact that the owner sold the property to a buyer known to be looking to
9 put a sales business into the structure tends to show the opposite. Gaps in time where the property
10 was not being used does not evidence an overt act, or failure to act, that would imply the owner no
11 longer claims or retains the nonconformity.

12 While it appears that the Appellant will have the prior owner(s) testify on this issue, this
13 information is all provided after the City's review and decision were made. The Appellant must prove
14 that the City's process in reviewing the application and issuing a decision with the information
15 available at that time is either clearly erroneous or not supported by a preponderance of evidence.
16 Given the information available to the City, and the process the City took, the Appellant will not be
17 able to meet this burden.

18 *iii. The structure has not been demolished or rebuilt.*

19 The structure has not been demolished so the legal nonconforming status has not been
20 abandoned by demolition. The code defines "rebuild" as:

21 to undertake construction within and/or on an existing building which has a valid
22 construction permit with construction value greater than 50 percent of the replacement
23 cost of the existing building being rebuilt. The permit value is valid for a 12-month
period beginning on the date of permit issuance.

24 RZC 21.78 – Definitions. The City compiled the estimated value of the permits associated with the
25 proposed project and determined that the construction value is approximately \$103,884. *See* City
26 Exhibit G to the City Staff Report (City Exhibit 1). City staff will testify as to the compilation of these
27 figures. Based on staff's experience, the figures that compromise the total construction value appear
28

1 reasonable and those figures were accepted for the purposes of this analysis. The City was provided
2 with an professional appraisal that included a building replacement value. *See* Exhibit F to the City
3 Staff Report (City Exhibit 1); *See* City Exhibit 8. The building replacement value provided to the City
4 in the appraisal was \$250,000. *See Id.* The City checked that appraised value using generalized online
5 resources that staff regularly rely upon for this type of information. The City determined that the
6 appraisal was reliable and the building replacement value was reasonable and chose to use that value
7 going forward. Because the construction value (\$103,884) is less than the replacement value of the
8 structure (\$250,000), the structure is not considered “rebuilt” and the legal nonconforming status is
9 not lost.

10 *b. Alteration of the legal nonconforming structure does not trigger a need for it to be*
11 *brought into compliance with the code.*

12 A legal nonconforming structure shall be brought into full compliance with the RZC when
13 alteration or expansion of the structure takes place, and the following takes place within any three-
14 year period:

- 15 (i) The gross floor area of the structure is increased by 100 percent or more; or
- 16 (ii) The costs stated on all approved building permit applications for the structure equal or
17 exceed the value of the existing structure at the beginning of that three-year period.

18 RZC 21.76.100(F)(9)(b). There is no increase in the gross floor area of the structure so (i) does not
19 apply. Similarly, a nonconforming landscaping or pedestrian system area shall be brought into
20 compliance with RZC 21.32, Landscaping, and RZC 21.10.150, Pedestrian System, if the costs
21 similarly exceed the value of the existing structure. RZC 21.76.100(F)(9)(c)(ii). There is no increase
22 in the gross floor area of the structure so (i) for both subsections (b) and (c) do not apply.

23 Further, as discussed above, the costs related to all approved building permit applications for
24 the structure total approximately \$103,884, which is less than the replacement value of the structure.
25 However, RZC 21.76.100(F)(9)(b)(ii) states that a legal nonconforming structure must be brought into
26 compliance if the costs stated on all approved building permit applications for the structure equal or
27 exceed the value of the existing structure within any three-year period. So, while the estimates
28 establish that the estimated costs do not exceed the replacement value, that could change as the project
progress. Along these lines, Applicant’s Exhibit 7 states that as of May 21, 2017, the apparent value

1 of the work completed under the approved building permit applications is \$204,493.80. While the
2 value has crept higher, this total remains below the threshold (replacement value of structure at
3 \$250,000) over which a structure must be brought into compliance with the RZC.

4 *c. Legal nonconforming status related to parking is not lost with approval of the building*
5 *permit.*

6 While there is a general nonconformity section at RZC 21.76.100(F)(7)(b) that references
7 parking, the most specific parking nonconformity regulation is discussed within the city-wide parking
8 regulations². See RZC 21.40.010(C)(1). When a preexisting building with nonconforming parking is
9 remodeled or rehabilitated but not enlarged, the existing use of the building may continue without
10 providing additional parking. RZC 21.40.010(C)(1)(c) (emphasis added). The City determined that
11 the subject site was in conformance with city code parking requirements historically. Historically, the
12 subject property had no parking onsite to support the storage and sales activities that took place there
13 and yet was an approved use at that location. The removal of the old T&D Feeds structure across the
14 street does nothing to change that fact. Therefore, the subject structure has the same parking now as
15 it did historically thereby making it legal nonconforming as to parking. The building permit subject
16 to this appeal does not include any enlargement of the preexisting building – the footprint remains
17 unchanged - so parking nonconformity is not lost.

18 **7) Issues Related to Sequencing Are Resolved.**

19 Appellant claims that the building permit was improperly approved prior to required land use
20 approvals. The project, in its final form, did not require land use approval and the building permit
21 approval issued by the City is sufficient to allow the project to proceed.

22 Review and approval of one or more land use permits is generally required for any
23 public, semipublic or private proposal for new construction or exterior modification to
24 a building or site.... Other actions requiring a land use permit include interior tenant
25 improvements that propose additional square footage (such as a mezzanine)... Land
26 use permit approval is not required for... Tenant improvements not associated with a

27 ²“A more specific statute supersedes a general statute only if the two statutes pertain to the same subject matter and conflict
28 to the extent they cannot be harmonized.” *State v. Conte*, 159 Wn. 2d 797, 810, 154 P.3d 194 (2007) (citing *In re Estate of Kerr*, 134 Wn.2d 328, 343, 949 P.2d 810 (1998)).

1 historic landmark and not encompassing or triggering modification to the exterior of
2 an existing building or site.

3 RZC 21.76.020(D)(2). (Emphasis added.) Further, the Administrator has design review authority on
4 all building permit applications that have a total valuation of less than \$50,000, thereby avoiding
5 Design Review Board review authority. *See* 21.76.020(E)(3).

6 Applicant's proposed project has evolved and been altered many times throughout its life.
7 With each alteration the City was required to reassess the appropriate path for City review. Early on
8 in discussions with the City, staff clearly indicated to Applicant that it was anticipated that the project
9 discussed in preliminary meetings would likely require an administrative modification prior to the
10 issuance of a building permit. *See* Appellant's Exhibit 59 (email in chain dated July 20, 2016 sent at
11 2:40pm from Gary Lee to Vicki Orrico). The City then received the applicant's building permit
12 application and change of use form with plans that included modifications to the exterior that would
13 require a separate permit. *See* City Exhibit 4. The total value for the tenant improvements, excluding
14 the exterior work was listed as \$25,100 on the Applicant's submittal. *See* City Exhibit 3. Because a
15 building permit application was properly submitted, the City reviewed that application and approved
16 it with clear notations that exterior work required a separate permit and was not a part of the building
17 permit review or approval. *See* *Id.* The building application indicated the valuation of the work under
18 the permit was under the \$50,000 threshold for design review authority. Therefore, the tenant
19 improvement work approved by the building permit would not need land use approval while the
20 exterior work would need land use approval at a later date depending on the intended scope of that
21 exterior work.

22 After identifying a perceived issue with the building permit approval due to the mezzanine
23 square footage, the City issued a correction notice that stopped work on the mezzanine. *See* City
24 Exhibit 5. Then, the Applicant started down the path of taking an administrative modification to the
25 Design Review Board, but subsequently withdrew that application. Nothing related to that process or
26 submittal is at issue in this hearing.

27 Because it appeared that the Applicant intended to continue forward without the mezzanine,
28 which was subject to the correction notice, the building inspector went to the site and determined that

1 a revision application was required to bring the plans current to the actual anticipated project. The
2 Applicant submitted the required revision application, which the City reviewed and ended up
3 approving. See City Exhibits 6, 7, and 9.

4 The scope of work outlined in the initial building permit as revised in the revision application
5 does not require land use approvals at this time. As such, the current project is in compliance with the
6 code as it pertains to sequencing of building and land use approvals.

7
8 **IV. CONCLUSION**

9 This appeal centers around a building permit, associated change of occupancy, and following
10 revision application which were approved by the City. None of those City approvals include any
11 change in use to marijuana retail sales. Repeated claims that such a change has been made should be
12 dealt with at the beginning of the hearing and extinguished going forward. Further, plaintiff will not
13 be able to meet its burden to establish that the legal nonconforming status of the property has been
14 lost. The City respectfully requests that the Hearing Examiner denied the pending appeal.

15
16 DATED this 12th day of July, 2017.

17 OGDEN MURPHY WALLACE, P.L.L.C.

18
19 By: 

20 James E. Haney, WSBA #11058
21 Attorneys for Respondent
22 City of Redmond
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