



CITY OF REDMOND
APPEAL APPLICATION FORM

(Staff Use Only)

File No: _____

Date Received: _____

Receipt No. _____

To file a land use appeal, please complete the attached form and pay the applicable appeal fee by 5:00 p.m. on the last day of the appeal period.

Form submission and payment must be by **PERSONAL DELIVERY** at City Hall 2nd Floor Customer Service Center c/o Office of the City Clerk-Hearing Examiner, 15670 NE 85th Street. Contact the Office of the Hearing Examiner with process questions at 425-556-2191.

Standing to Appeal:

- **Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II)** - the project applicant, owner, or any person who submitted written comments (party of record) prior to the date the decision was issued may appeal the decision. The written appeal and the applicable fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. on the 14th calendar day following the date of the decision.
- **Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II)** - the project applicant, owner, City staff, or any party who appealed the department director's or Technical Committee's decision to the Hearing Examiner. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's reconsideration period.
- **Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III)** - the project applicant, owner, City staff, or any person who established themselves as a party of record prior to or at the public hearing. The written appeal and the applicable appeal fee must be received by the City of Redmond's Office of the Hearing Examiner no later than 5:00 p.m. 10 business days following the expiration of the Hearing Examiner's (or Landmarks and Heritage Commission's) reconsideration period.

Should the appellant prevail in the appeal, the appeal application fee will be refunded (City of Redmond Resolution No. 1459). The appeal application fee will not be refunded for appeals that are withdrawn or dismissed.

City Council decisions may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in RCW Chapter 36.70C. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW Section 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Please continue to page 2 to select your appeal type.

Please check the applicable appeal:

- ☐ Appeal to the Hearing Examiner of a SEPA decision RZC 21.70.190(E). (Please be sure to understand the type of SEPA appeal you are filing, and if a further appeal to the underlying action is needed.)
- ☐ Appeal to the Hearing Examiner of an Administrative, Technical Committee or Design Review Board Decision (Type I or II) RZC 21.76.060(I)
- ☒ ^{Amended} Appeal to the City Council of a Hearing Examiner decision on an appeal (Type I or II) RZC 21.76.060(M)
- ☐ Appeal to the City Council of a Hearing Examiner (or Landmarks and Heritage Commission) decision on an application (Type III) RZC 21.76.060(M)

Section A. General Information

Name of Appellant: WPDC Cleveland LLC (contact through counsel)
Address: 1420 F.5th Avenue, Ste. 3400
City: Seattle State: WA Zip: 98101
Email: alaing@schwabe.com
Phone: (home) _____ (work) 206.407.1553 (cell) 206.450.0950

Name of project that is being appealed: Origins Cannabis
File number of project that is being appealed: BLDG-2016-09202 / BPLN-2016-02092 / BPLN-2017-0445
Date of decision on project that is being appealed: May 19, 2017
Expiration date of appeal period: June 2, 2017

What is your relationship to the project?

☒ Party of Record ☐ Project Applicant ☐ Government Agency

Pursuant to the Redmond Zoning Code, only certain individuals have standing to appeal a decision on application or appeal (See page 1 above). Below, please provide a statement describing your standing to appeal, and reference all applicable City Code citations.

See attached letter dated June 2, 2017 and attachments thereto.

This is an amended appeal to an existing appeal filed March 2, 2017.

Section B. **Basis for Appeal**

Please fill out items 1-4 below. Reference all applicable City Code citations and attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision:

See attached letter & attachments thereto.

2. Please provide a concise statement identifying each alleged error of fact, law, or procedure, and how the decision has failed to meet the applicable decision criteria:

See attached letter & attachments thereto.

If appealing a Hearing Examiner decision: Please provide the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed:

N/A

3. Please state the specific relief requested:

See attached letter & attachments thereto.

4. Please provide any other information reasonably necessary to make a decision on the appeal:

See attached letter & attachments thereto.

Do not use this form if you are appealing a decision on a:

- Shoreline Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(b)*)
- Shoreline Variance or a Shoreline Conditional Use Permit (must be appealed to the State Shoreline Hearings Board *RZC 21.68.200(C)(6)(c)*)
- Hearing Examiner decision on a SEPA appeal (not an appealable action as successive appeals are not allowed *RZC 21.70.190(D)*)
- City Council approval or denial (must be appealed to Superior Court *RZC 21.76.060.Q*)

June 2, 2017

Aaron M. Laing
Admitted in Washington
T: 206-407-1553
alaing@schwabe.com

BY HAND DELIVERY & EMAIL

City Hall, 2nd Floor
Customer Service Center
c/o Office of the Hearing Examiner/
City Clerk
15670 NE 85th Street
Redmond, WA 98073

**RE: Amended Appeal of Origins Cannabis Type I Permit -- BLDG-2016-09802
and BPLN-2016-02092 & BPLN-2017-0445**

Dear Hearing Examiner:

Pursuant to Redmond Zoning Code (RZC) Chapter 21.76, we write on behalf of appellant WPDC Cleveland LLC ("WPDC"), and hereby file an amended appeal of the City of Redmond's original February 17, 2017 Type I administrative decision to issue building permit number BLDG-2016-09802 and the City's May 19, 2017 Type I administrative decision to issue a revised building permit under the same permit number as well as all related ancillary approvals, including without limitation the change of occupancy permit issued under City sub-plan number BPLN-2016-02092 and the change of occupancy permit issued under City sub-plan number BPLN-2017-0045 (collectively, the "Decision"), for the Origins Cannabis project to be located at 16390 Cleveland Street, Redmond, WA 98052, King County tax parcel number 719880-0085 (the "Project Site"). For reference, a true and correct copy of a June 2, 2017 screen shot of the City's online permit E-Track Portal for the Decision is provided as **Attachment 1** hereto.

Per the attached email dated May 22, 2017 from the Hearing Examiner's Assistant (**Attachment 2** hereto), we include the City's standard Type I appeal form; however, because this is an ongoing appeal and the fee has already been paid, no additional appeal fee is required. Per RZC 21.76.060.I.2., appellant WPDC provides the following information:

Standing/Right to Appeal & Background Facts

WPDC owns the adjacent abutting parcel to the Project Site, which parcel is located at 16330 Cleveland Street, Redmond, WA 98052, King County tax parcel number 719880-0086 (the "WPDC Property"). WPDC has been a party to this appeal and a party of record since filing the original appeal on March 2, 2017. Per the attached email string dated May 8, 2017 through May 11, 2017 (**Attachment 3** hereto), WPDC both requested to be made a party of record to the revised building permit and new change of occupancy permit and raised additional comments, and objects to both the process for reviewing and the substance of the revised building permit

and new change of occupancy permit. For brevity, WPDC hereby incorporates its comments in **Attachment 3** as if fully set forth herein. WPDC also attaches and hereby incorporates by reference as if fully set forth herein the Material Facts sections from its May 1, 2017 Motion for Partial Summary Judgment in this matter and its May 8, 2017 Response in Opposition to Applicant's Motion to dismiss in this matter (respectively, as **Attachments 4** and **5** hereto).

As stated in the original March 2, 2017 appeal, the WPDC Property and the Project Site are in the City's Downtown – Old Town ("OT") zone, per RZC 21.10.020 & .030. The WPDC Property is developed with a retail building and associated surface parking, and it is occupied by the locally owned Prime Steakhouse restaurant.

The Project Site is occupied by an abandoned warehouse with no existing onsite parking spaces. Although King County records (see **Attachment 6**) state that the present use is "warehouse," there is no evidence that the building on the Project Site has been occupied or used for any lawful purpose since at least 2002 and likely earlier. The fact that the Project Site has never been used for anything but storage/warehouse use is well known to the City.

The City has taken code enforcement actions against prior occupants for using the Project Site for other than storage/warehouse use. The City has informed a prior owner that any commercial use—including retail use—would require the Project Site to be brought up to conformance with existing codes. The City has not held the applicant to the same rules that it informed a prior owner would apply to renovating and changing the occupancy and/or use of the Project Site.

Per RZC 21.10.030.D. (Table 21.10.030C), "warehouse" use is not a permitted use in the OT zone, and the building and Project Site do not conform to current land use or building code requirements, making both the building and site non-conforming, per the definitions in RZC Chapter 21.78.

On June 18, 2016, City Ordinance No. 2836 became effective and created a new land use, "marijuana retail sales." "Marijuana retail sales" is a permitted use in the OT zone and is a separate and distinct use from "General Sales or Services," as shown in both in the OT Allowed Uses and Basic Development Standards ((Table 21.10.030C)) and per RZC Chapter 21.41, Marijuana-Related Uses. In fact, "Marijuana retail sales" is by definition not "General Sales or Services," per RZC Chapter 21.78 (Definitions).

Per both the original and revised building permit applications, it also appears that the usable interior space of the abandoned warehouse on the Project Site will be increased from approximately 2,800 square feet to approximately 3,300 square feet—a nearly 20% increase in usable building square footage—through the addition of a mezzanine. The revised building permit still includes the mezzanine, which has been designed and constructed to be load bearing and made habitable for office, retail and other uses through the provision of electricity, lighting, HVAC and other services. The revised building permit application also changes the number and location of accesses to the building.

RZC 21.76.020.D.2. states, in part, that “Review and approval of one or more land use permits is generally required for any . . . exterior modification to a building or site, . . . expansion or exterior remodeling of structures. . . . Other actions requiring a land use permit include interior tenant improvements that propose additional square footage . . .” As acknowledged on the face of the application submittals, the project will add square footage and allow for exterior modification to the building and site to address fenestration and ingress/egress requirements, HVAC requirements, exterior finishes and other improvements, as the building does not meet code. RZC 21.76.020.H.4.a. provides: “All land use permits required by the RZC must be obtained *before* any building or construction permit may be issued.” (Emphasis added.) RZC 21.76.020.E. further provides that “RZC Article II, *Design Standards*, shall be required for all applications requiring a building permit for exterior modifications . . .”

The original building permit did not allow for exterior modifications, and the applicant was informed prior to issuance that the exterior modifications (*i.e.*, windows, doors, storefronts, finishes, trim, canopies/awnings, *etc.*) would require a land use permit. Nevertheless, the City issued the revised building permit and change of occupancy to allow for significant exterior modifications without the requisite land use permit, including but not limited to a Site Plan Entitlement permit, Administrative Modification permit and/or Design Review. *See Attachments 3-5*. As with the original building permit, it appears that the applicant, with assistance from the City, is piecemealing the permit process, possibly with the intent to (and certainly with the result of) avoid(ing) heightened public notice and review requirements and substantive permit requirements and conditions.

The proposed change of occupancy and/or land use to General Sales or Services Use, including but not limited to retail use, and/or to a Marijuana Retail Sales use will generate new and additional vehicular traffic and demand for customer and employee parking, delivery parking and other impacts. Per RZC 21.10.030.D. (Table 21.10.030C), General Sales or Services use requires at least two (2.0) parking spaces per one thousand (1,000) square feet of gross floor area, and a Marijuana Retail Sales establishment (a distinct and different use, by code) of this size must provide at least two (2.0) and up to five (5.0) parking spaces per one thousand (1,000) square feet of gross floor area, with a minimum of six (6) to seven (7) onsite parking spaces, depending on the size of the actual use. RZC 21.40.020.D. (Table 21.10.020), short- and long-term bicycle parking spaces are also required. By information and belief, the proposed change of occupancy and/or land use to General Sales or Services Use, including but not limited to retail use, and/or to a Marijuana Retail Sales use will trigger the City’s traffic concurrency requirements.

The City failed and/or refused to require the applicant to submit a transportation impact analysis and failed and/or refused to condition the Decision on providing requisite parking, payment of any and/or the correct transportation impact fee and/or providing required right-of-way dedications and/or improvements.

Also, the proposed Origins Cannabis project will have no onsite vehicular or bicycle parking spaces, and, because it abuts the WPDC Property on its two non-street facing sides (north and

west), it has no place for utility (gas, electric, water, *etc.*) meters, making it non-code compliant in this regard, too. The revised building permit lacks any place to store garbage recycling—inside or outside of the proposed building—and the interior doors to the proposed storage room and the employee room do not provide Americans with Disabilities Act (ADA)-compliant clearances.

Further, the proposed ladder to the mezzanine lacks OSHA-required clearances and creates a safety hazard, as it is accessible from the public areas in the building. Because the ladder does not extend to the roof directly, it appears that it is temporary and that the mezzanine (which is designed to be occupied) will simply be served by a staircase once this appeal is resolved.

Similarly, it appears that the applicant removed the exterior awning from the drawings to reduce estimated costs and the scope of exterior improvements; however, tellingly the anchors and structural supports for the awing are still included in the revised building permit plans.

The windows on the on the north, east and west walls are within three feet (3') of the adjacent property line, in violation of the International Building Code (IBC).

On April 10, 2017, the City received a form from the Washington State Liquor and Cannabis Board to approve the Project Site as a location for a retail marijuana sales establishment. *See Attachment 8*. By information and belief, the City completed the form and approved the location.

As shown in **Attachment 7** (true and correct copies of the City's marijuana retail site and buffer maps from the City's website), the Project Site is enveloped by multiple regulatory buffers that preclude siting a marijuana retail establishment on or even near the proposed location. The Project Site is located within 1,000 feet of one or more existing City public parks, playgrounds and/or schools, including but not limited to the City's Downtown Park splash playground two blocks away east along Cleveland Street, the Lake Washington School District headquarters two blocks south of the Project Site and Redmond Elementary School/Old Redmond Schoolhouse campus northeast of the Project Site.

Per **Attachment 7** and on information and belief, the Project Site is also located within 100 feet of one or more existing recreation centers and childcare centers, including the Redmond Old Firehouse Teen Center.

Applicant's proposed improvements are estimated to exceed five hundred thousand dollars (\$500,000), and the applicant's representative estimated that they would exceed two hundred thousand dollars (\$200,000). The abandoned building's value is less than two hundred fifty thousand dollars (\$250,000). The proposed exterior improvements alone will exceed one hundred fifty thousand dollars (\$150,000). Nevertheless, the City has failed and/or refused to require the Project Site to be made conforming, and the City issued the revised building permit and change of occupancy to allow exterior modifications without the requisite land use permit. *See Attachments 3-5*. As with the original building permit, it appears that the applicant, with assistance from the City, is piecemealing the permit process, possibly with the intent to (and

certainly with the result of) avoid(ing) heightened public notice and review requirements and substantive permit requirements and conditions.

Despite being an abutting, neighboring property owner, WPDC was not provided any notice of the Origins Cannabis project prior to issuance of the original building permit and only learned of it when demolition on the Project Site commenced approximately one week after the original Decision issued. On information and belief, the City's failure and/or refusal to provide WPDC notice of the Origins Cannabis project application prior to issuance of the original Decision was done deliberately and/or in bad faith with the intent to deprive WPDC of the opportunity to review and comment on the application.

Further, the City's failure and/or refusal to require a Site Plan Entitlement permit, Administrative Modification Permit, Design Review and/or other land use permit deprived and continues to deprive WPDC and the public of notice and an opportunity to comment. Regardless of the City's reasons for not providing such notice or requiring a land use permit and the associated process, WPDC was deprived of its due process rights to notice and comment on the original application and the final Decision on the revised permits.

Since February 2017, the applicant's representatives have already repeatedly trespassed on the WPDC Property and caused financial harm and inconvenience. It is not physically possible for the applicant to make the improvements in the revised building permit without further trespass on the WPDC Property.

In sum, WPDC is and will be adversely affected by the Decision for the following reasons: lack of notice of the application; the lack of an opportunity to comment; trespass by applicant's employees, customers, delivery personnel, contractors and owners, invitees, and/or licensees on the WPDC Property and the associated added cost of monitoring and enforcing its property rights; unlawful use of the WPDC Property's parking spaces by applicants and/or its tenants, employees, customers, delivery personnel, contractors, owners, invitees, and/or licensees and the associated added cost of monitoring and enforcing its property rights; and/or interference with WPDC's and/or the Prime Steakhouse's guests', invitees' and licensees' quiet use and enjoyment of the WPDC Property by the applicant and/or applicants tenants, employees, customers, delivery personnel, contractors and owners/tenants, invitees, and/or licensees and the associated added cost of monitoring and enforcing its property rights.

WPDC is further harmed by the unlawful siting of a retail marijuana establishment on the Project Site, which is located within buffers for schools, parks, playgrounds, child care centers and recreation centers required by state law and City regulations (*see, e.g.*, WAC 314-55-050 and RZC 21.41.040). But for the unlawful siting of this use, WPDC would not suffer the specific harms associated with such development and use on the adjacent property (Project Site).

Errors of Procedure, Fact and Law

WPDC incorporates the facts set forth above, and those in the Attachments, as if fully set forth below, for purposes of meeting the factual specificity requirements of the City's code and appeal form. The City's Decision is in error because:

- 1) the City failed to provide WPDC any notice or opportunity to comment on the Origins Cannabis project prior to issuing the original Decision, which violates City notice requirements under RZC 21.76.020, .050, .060, & .080 and as required by RCW 36.70B.110, Washington common law and state and federal constitutional due process clauses;
- 2) the City failed to require compliance with the procedural and substantive requirements of RZC 21.76.020.D., RZC 21.76.020.E., RZC 21.76.020.H., RZC 21.76.060.E.-G., RZC 21.76.070.B., RZC 21.76.070.Y. and/or RZC 21.76.090.D. in: allowing for the piecemealing of the permit process; allowing for a change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use in a building that does not meet substantive land use code requirements and/or comply with the building code; approving exterior improvements and/or modification to the Project Site and/or building; approving a revised building permit without requiring an Administrative Modification permit; failing to condition approval of the Decision on payment of any and/or the correct amount of impact fees and/or dedication and construction of planned right-of-way improvements; and/or approving a change of occupancy and/or use with increased usable floor area on a non-conforming site in a non-conforming structure without required parking, bicycle parking, loading, garbage/recycling, and/or utility meters;
- 3) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.a., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C) because the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use is a change in land use and such change in use requires provision of onsite parking spaces and none is provided;
- 4) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.a.-b., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C) because the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use will result in an enlargement of the leasable floor area and such enlargement requires provision of onsite parking spaces and none is provided;
- 5) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.c., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C) because the proposed change in occupancy and/or use to

General Sales or Services and/or Marijuana Retail Sales use will result in a change in land use and such change in use requires provision of at least the code minimum number of onsite parking spaces and bicycle parking, and none is provided;

- 6) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.c., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C) because the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use will result in an enlargement of the leasable floor area, and such enlargement requires provision of at least the code minimum number of onsite parking spaces and bicycle parking, and none is provided;
- 7) the City failed to follow the criteria and requirements of RZC 21.40.010.C.1.e., Nonconforming Parking, and the parking requirements in RZC 21.10.030.D. (Table 21.10.030C) because the prior use, warehouse, was abandoned and/or terminated and the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use requires provision of at least the code minimum number of onsite parking spaces and bicycle parking, and none is provided;
- 8) the City failed to follow the criteria and requirements of RZC 21.40.010.E.8., Off-Street Loading Space, because the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use requires provision of off-street parking/loading facilities for service vehicles, and none is provided;
- 9) the City failed to follow the criteria and requirements of RZC 21.76.100.F.7. for the alteration and/or expansion of a nonconforming use because the warehouse use of the building on the Project Site was changed and/or abandoned and/or terminated for at least twelve (12) months, the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use is a change of use, and therefore all rights to any parking nonconformities have been terminated, which requires the new use to provide code-compliant onsite parking and loading spaces;
- 10) the City failed to follow the criteria and requirements of RZC 21.76.100.F.9.a.&b. for the alteration or expansion of a nonconforming structure in conjunction with a change of occupancy and/or use as the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use will increase the parking nonconformity as the use requires more onsite parking than a warehouse use and/or the value of the improvements equal or exceed the value of the existing structure, including but not limited to future improvements to be undertaken from the date of the Decision forward for three years;

- 11) the City failed to follow the criteria and requirements of RZC Chapter 21.60, Citywide Design Standards, and RZC 21.62.020, Downtown Design Standards, in failing to require Design Review and/or compliance with the applicable design standards for the building and Project Site;
- 12) the City failed to follow the criteria and requirements of RZC 21.76.090.E., Revocation of Permits, for failing and/or refusing to revoke or otherwise rescind the Decision despite actual knowledge of facts that demonstrate the Decision was issued in error and/or obtained by misrepresentation of material fact, including without limitation the estimated value of the improvements, the transportation impacts associated with the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use, the location of the Project Site within the City and state required buffers for marijuana retail sales establishments and/or the prior/existing use of the Project Site;
- 13) the City failed to follow the criteria and requirements of RZC 21.41.040.C.&D. and WAC 314-55.050(10)&(11) (marijuana retail sales establishment buffer requirements) because the approval of a marijuana retail establishment is within the required buffers for one or more parks, playgrounds, schools, recreation centers and/or childcare centers, as detailed above; and
- 14) the City failed to follow the criteria and requirements of RZC Chapter 21.76.070.B., Criteria Applicable to All Land Use Permits, because the approval of change in occupancy and/or use to General Sales or Services and/or Marijuana Retail Sales use is inconsistent with the City's development regulations cited above as well as RZC 21.41.040.C. &D. (buffer requirements) for the change in occupancy and/or use from abandoned warehouse to retail marijuana establishment.

Relief Requested

WPDC respectfully requests that the Hearing Examiner reverse the Decision to approve the Origin Cannabis project, deny the applications for a building permit and change of use, and remand the same for processing consistent with applicable codes, including without limitation the City's Site Plan Entitlement, Administrative Modification and/or Design Review requirements.

Alternately, WPDC respectfully requests that the Hearing Examiner condition the Decision on the provision of required onsite parking, loading spaces, garbage/recycling spaces, bicycle parking spaces, dedication and construction of frontage improvements, and/or payment of impact fees, and on compliance with the City's applicable Site Plan Entitlement, Administrative Modification and/or Design Review requirements.

Other Information

WPDC reserves the right to amend this appeal, including the City's alleged errors, to conform with additional facts obtained through a request for public records pursuant to RCW Chapter 42.56, the Public Records Act, to be presented to the City upon filing of this appeal. WPDC reserves the right to introduce additional information through testimony, documents, photographs and other such means as allowed under the adopted City of Redmond Hearing Examiner Rules of Procedure ("ROP").

Per ROP VII.A, we respectfully request a prehearing conference to be held at a mutually agreeable time and date. We remain available on June 22, 2017 at 1:00 p.m., per the Hearing Examiner's May 24, 2017 Order Striking Hearing Date and Staying Appeal.

By separate communication, we will notify the Washington State Liquor and Cannabis Board of this appeal and request that the Board terminate the Origins Cannabis (A Green Life) license.

Thank you for your thoughtful consideration of this matter.

Very truly yours,

SCHWABE, WILLIAMSON & WYATT, P.C.



Aaron M. Laing

AAL:jan
Attachments

cc: Cheryl D. Xanthos, Deputy City Clerk (email only)
All counsel of record (email only)

PDX\131246\221725\AAL\20897386.2

Attachment 1

[Home](#) [Permits](#) [Plans](#) [Inspections](#) [Business Licenses](#) [Citizen Request](#) [Quick Links](#)



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Permit Number: BLDG-2016-09802



Permit Details

Type: Change of Occupancy **IVR Number:** 144776 **Application Date:** 12/9/2016
Work Class: To Commercial **Project Name:** Origins Cannabis **Issued Date:** 2/17/2017
Status: Issued **District:** Downtown **Expiration Date:** 1/14/2018
Description: TI - Change of ... **Square Feet:** 3268.00 **Finalized Date:** None
Valuation: 21500.0000

Primary Address Details

Parcel : 7198800085
Address : 16390 CLEVELAND ST
REDMOND, WA 98052
United States



Contact Details

Type	Company	First Name	Last Name	Title
Contractor	WAYNE CONSTRUCTION LLC			Construction
Owner	Rain City Development			

1 Displaying items 1 - 5 of 5

Existing Inspections

Type	Status	Request Date	Scheduled Date	Inspector
BLDG Other	Correction Required	3/8/2017	3/8/2017	Shepard, Brett
BLDG Other	Not Ready	3/29/2017	3/29/2017	McLeod, Kenny
BLDG Other	Partial Approval	3/31/2017	3/31/2017	McLeod, Kenny

1 Displaying items 1 - 6 of 6

Remaining Inspections

Type	Status	Date	Reinspection
BLDG Other			Yes
BLDG Floor Framing			No
BLDG Exterior Shear Wall			No
BLDG Fire Safing			No

1 2 Displaying items 1 - 10 of 18

Existing SubPermits

Permit Number	Type	WorkClass	Status
ELEC-2017-03430	Electrical - OTC	Commercial	
PLUM-2017-03837	Plumbing - OTC	Commercial	

1 Displaying items 1 - 2 of 2

Remaining SubPermits

Type	WorkClass
Apply Mechanical Plan Review	Commercial
Apply Side Sewer	Connection
Apply Water Meter	Install - Commercial

1 Displaying items 1 - 3 of 3

Existing SubPlans

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Remaining SubPlans

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Type	WorkClass
No records to display.	
Displaying items 0 - 0 of 0	

File Name	
APPROVED ARCHITECTURAL SITE COPY - BLDG-2016-09802.pdf	View
WSEC ENVELOPE - BLDG-2016-09802.pdf	View
WSEC LIGHTING SUMMARY - BLDG-2016-09802.pdf	View
APPROVED SITE COPY_BLDG-2016-09802_STRUCT PLANS_021417.pdf	View
APPROVED SITE COPY_BLDG-2016-09802_STRUCT SUPPORT DOCS_021417.pdf	View

12

Displaying items 1 - 10 of 13

Submittal Type	Status	Version	Received Date	Due Date	Completed Date
No records to display.					
					Displaying items 0 - 0 of 0

Attachment 2

Laing, Aaron M.

From: Cheryl D. Xanthos <cdxanthos@redmond.gov>
Sent: Monday, May 22, 2017 7:28 AM
To: Laing, Aaron M.
Cc: Anderson, James C.; Jim Haney Outside Address; Vicki Orrico (Orrico@jmmlaw.com); 'Daniel P. Kenny'; Michelle Hart; Steve Fischer; Gary Lee
Subject: Re: Origins Appeal Hearing BLDG-2016-09802, BPLN-2016-02092

Aaron,

Please fill out the same appeal form and just note that it is amending your current appeal. No additional \$500 is required.

Thank you,
Cheryl

From: Laing, Aaron M. <ALaing@SCHWABE.com>
Sent: Friday, May 19, 2017 12:43:30 PM
To: Cheryl D. Xanthos; City Clerk
Cc: Anderson, James C.; Jim Haney Outside Address; Vicki Orrico (Orrico@jmmlaw.com); 'Daniel P. Kenny'
Subject: FW: Origins Appeal Hearing BLDG-2016-09802, BPLN-2016-02092

Dear Ms. Xanthos & City Clerk,

We hope this finds you each well!

We are the appellant in an existing appeal of a Type I decision, which was filed in early March 2017. Today, the City issued a decision on a revised application under the same building permit number. We will need to amend our appeal to address the revised application / permit, which was contemplated by the parties at the pre-hearing conference and referenced in the Hearing Examiner's March 17, 2017 Order Setting Pre-Hearing Document Exchange Schedule.

The City's standard form (attached), the code, the Hearing Examiner Rules of Procedure and information about appeals on the City's website (http://www.redmond.gov/Government/HearingExaminer/request_for_reconsideration_or_appeal/) do not mention the process for amending an appeal. We are amenable to filling out the form again and identifying this as an amended appeal, if that is acceptable to the City.

Also, do we need to pay an additional \$500 appeal fee, or does the fee we paid for the initial appeal also cover amendments to the appeal?

We are not seeking legal advice; we are only seeking clarification regarding the City's process for amending an existing appeal.

Thank you for your assistance on this.

Respectfully yours,

Schwabe Williamson & Wyatt

Aaron M. Laing

Shareholder

Direct: 206-407-1553

alaing@schwabe.com

Ideas fuel industries. Learn more at:

www.schwabe.com



From: Laing, Aaron M.

Sent: Friday, May 19, 2017 12:20 PM

To: 'Daniel P. Kenny'; 'Cheryl D. Xanthos'

Cc: Gary Lee; Steve Fischer; Evanna Charlot (Charlot57TB@jmmlaw.com); 'Kolouskova@jmmlaw.com'; James E. Haney; Vicki Orrico (Orrico@jmmlaw.com); Anderson, James C.; 'Kevin Wallace'

Subject: RE: Origins Appeal Hearing BLDG-2016-09802, BPLN-2016-02092

Importance: High

Thanks, Daniel!

We will file an amended appeal next week.

If there are any other documents with permit conditions, etc., please send them along.

Best regards,

Schwabe Williamson & Wyatt

Aaron M. Laing

Shareholder

Direct: 206-407-1553

alaing@schwabe.com

Ideas fuel industries. Learn more at:

www.schwabe.com



From: Daniel P. Kenny [<mailto:dpkenny@omwlaw.com>]

Sent: Friday, May 19, 2017 11:54 AM

To: 'Cheryl D. Xanthos'

Cc: Gary Lee; Steve Fischer; Evanna Charlot (Charlot57TB@jmmlaw.com); 'Kolouskova@jmmlaw.com'; Laing, Aaron M.; James E. Haney; Vicki Orrico (Orrico@jmmlaw.com)

Subject: RE: Origins Appeal Hearing BLDG-2016-09802, BPLN-2016-02092

Pursuant to the Hearing Examiner's May 15, 2017 Order, the City of Redmond is providing notice to all parties and the Hearing Examiner of the City's approval of the revision application that occurred today (5/19/2017). Jozanne Moe's email to applicant conveying the approval is attached to this email. The documents available to applicant via the online portal are also attached here for reference.

Sincerely,

Daniel P. Kenny | Attorney

Ogden Murphy Wallace P.L.L.C.

901 Fifth Avenue, Suite 3500

Seattle, WA 98164

phone: 206.447.2258 | fax: 206.926.2861 | email: dpkenny@omwlaw.com

www.omwlaw.com

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From: Cheryl D. Xanthos [<mailto:cdxanthos@redmond.gov>]

Sent: Monday, May 15, 2017 4:41 PM

To: 'Laing, Aaron M.'; James E. Haney; Daniel P. Kenny; Vicki Orrico (Orrico@jmmlaw.com)

Cc: Gary Lee; Steve Fischer; Evanna Charlot (Charlot57TB@jmmlaw.com); 'Kolouskova@jmmlaw.com'; Gloria J. Zak

Subject: Origins Appeal Hearing BLDG-2016-09802, BPLN-2016-02092

Importance: High

Please find attached the Hearing Examiner's Ruling on Motions from Each Party.

Let me know if you have any questions.

Thanks,
Cheryl

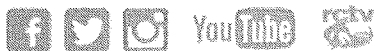


Cheryl Xanthos, CMC

Deputy City Clerk | City of Redmond

☎: 425.556.2191 | ✉: cdxanthos@redmond.gov | Redmond.gov

MS: 3NFN | 15670 NE 85th St | Redmond, WA 98052



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Attachment 3

Laing, Aaron M.

From: Laing, Aaron M.
Sent: Thursday, May 11, 2017 11:51 AM
To: 'James E. Haney'; Daniel P. Kenny; 'Duana Kolouskova'; 'Vicki Orrico'; 'GLEE@REDMOND.GOV'; 'JMOE@redmond.gov'; 'Steve Fischer'
Cc: Anderson, James C.; 'Mr. Kevin R. Wallace'
Subject: RE: In the Matter of the Appel of WPDC Cleveland LLC - Case No. BLDG 2016-09802
Importance: High

Jim,

Thank you for your response.

IBC 107.4, Amended Construction Documents, states: "Work shall be installed in accordance with the *approved construction documents*, and any changes made during construction that are not in compliance with the *approved construction documents* shall be resubmitted for approval as an amended set of *construction documents*." See <https://codes.iccsafe.org/public/document/code/542/9665673>. (Italics in original.) This section is clearly inapplicable to the present scenario. The issue isn't that the Applicant made changes during construction that are not in compliance with the approved permits; the issue is that the Applicant is substantially revising / modifying its permits so that it can construct something different than previously approved.

We recognize that the Hearing Examiner will ultimately sort this out. And likely the City Council, the Superior Court and Court of Appeals, too, if necessary.

Our client has made a good faith effort since late-February to help the Applicant avoid incurring unnecessary costs (including construction costs and legal fees) by asking that the process be corrected before work commenced or continued.

We will be amending the appeal to address this latest twist, once there is a final decision ripe for appeal.

Respectfully yours,

Schwabe Williamson & Wyatt

Aaron M. Laing
Shareholder
Direct: 206-407-1553
alaing@schwabe.com

Ideas fuel industries. Learn more at:
www.schwabe.com



From: James E. Haney [mailto:jhaney@omwlaw.com]
Sent: Thursday, May 11, 2017 7:38 AM
To: Laing, Aaron M.; Daniel P. Kenny; 'Duana Kolouskova'; 'Vicki Orrico'; 'GLEE@REDMOND.GOV'; 'JMOE@redmond.gov'; 'Steve Fischer'

Cc: Anderson, James C.; 'Mr. Kevin R. Wallace'

Subject: RE: In the Matter of the Appel of WPDC Cleveland LLC - Case No. BLDG 2016-09802

Aaron,

I don't think it is productive for me to engage in an email debate with you over each and every argument or insinuation you make in the emails below. I doubt that I will ever convince you that the City has acted properly with respect to the revision, although I am confident that it has. Suffice it to say that I disagree with your conclusions and your pejorative characterization of the City's actions and anticipate that this will all be sorted out by the Hearing Examiner.

I do, however, want to correct a couple of fundamental misunderstandings that you have regarding the currently pending revision. First, there is one permit that is at issue here, not two. While the City's permit tracking software sets up the construction drawing revision request under a separate number, that is simply a function of the software and what is being requested is a revision to the construction drawings that were approved with the original permit. If the revision request is approved, the revisions will be part of the original permit, not a separate permit. Second, the construction drawing revision process that is being used here is expressly authorized by Section 107.4 of the International Building Code, as adopted by the City. The administrative modification process set forth in the Zoning Code does not apply to construction drawing revisions under the IBC and you have misread the code in this regard. Third, there is no such thing as a party of record to a construction drawing revision request under Section 107.4 and there is no legal requirement that the City provide you or your clients with any special notice of any steps the City is taking during review. The City will, of course, notify the Hearing Examiner of the City's action on the construction drawing revision request when that action is taken and any communication the City makes to the Hearing Examiner will be copied to you. In the meantime, you may wish to continue monitoring the City's E-Track Portal. The City expects to make a decision on the revision request soon.

Jim

James E. Haney | Attorney at Law

Ogden Murphy Wallace P.L.L.C.

901 Fifth Avenue, Suite 3500

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From: Laing, Aaron M. [<mailto:ALaing@SCHWABE.com>]

Sent: Tuesday, May 09, 2017 1:39 PM

To: Daniel P. Kenny; James E. Haney; 'Duana Kolouskova'; 'Vicki Orrico'; 'GLEE@REDMOND.GOV'; 'JMoe@redmond.gov'; 'Rob Odle'; 'JLYNCH@redmond.gov'

Cc: Anderson, James C.; 'Mr. Kevin R. Wallace'

Subject: RE: In the Matter of the Appel of WPDC Cleveland LLC - Case No. BLDG 2016-09802

Importance: High

Dear All,

One more item: according to the City's online PermitView E-Track Portal webpage, the previously issued Change of Occupancy permit, BPLN-2016-02092, appears to have been superseded or withdrawn and replaced by Change of Occupancy permit BPLN-2017-00445, with current status "Under Review." The application date is listed as May 3, 2017, but no documents are linked or available.

First, we ask that WPDC Cleveland, LLC be made a party of record to the new Origins Cannabis Change of Occupancy permit, BPLN-2017-00445.

Second, by clicking on the Description bubble for BPLN-2017-00445, I see that it says "Revision #1: Removing 470 sq ft mezzanine, creating new storefront and adding stucco and siding to exterior. Creating additional tenant space, total of 3 tenant spaces. Update energy and structural calcs included."

Third, we note that (per the same webpage) the Description bubble for the Origins Cannabis Building Permit, BLDG-2016-09802, contains the same language: "Revision #1: Removing 470 sq ft mezzanine, creating new storefront and adding stucco and siding to exterior. Creating additional tenant space, total of 3 tenant spaces. Update energy and structural calcs included."

Fourth, it's clear that "creating new storefront and adding stucco and siding to exterior" triggers Design Review, compliance with the Design Guidelines, a Site Plan Entitlement and other requirements set forth below. Adding a third retail space also changes parking and other requirements.

In sum, this new proposal is a significant and substantial change to both the approved interior-only permit as well as significant additions to the approved permit, including the exterior modifications. We object to the continued piecemeal and unlawful behind-closed-doors processing of the Origins Cannabis project's permits.

Please consider these comments and our comments below, including the documents we attached to our prior email, in the processing of both the proposed modification to the approved Origins Cannabis Building Permit, BLDG-2016-09802, and the new Change of Occupancy Permit, BPLN-2017-00445.

Also, please confirm that you have received our emails and made WPDC Cleveland, LLC a party of record to both permits.

Respectfully yours,

Schwabe Williamson & Wyatt

Aaron M. Laing

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www.schwabe.com

From: Laing, Aaron M.

Sent: Tuesday, May 09, 2017 1:04 PM

To: dpkenny@omwlaw.com; James E. Haney Esq.; Duana Kolouskova; Vicki Orrico; GLEE@REDMOND.GOV; 'JMOE@redmond.gov'; 'Rob Odle'; 'JLYNCH@redmond.gov'

Cc: Anderson, James C.; Mr. Kevin R. Wallace

Subject: RE: In the Matter of the Appel of WPDC Cleveland LLC - Case No. BLDG 2016-09802
Importance: High

Dear All,

In addition to our reiterated request to be made a party of record (see below), we object to the City's processing of the Applicant's revised building permit without following the required process and without the Applicant submitting complete applications that meet substantive code requirements, including but not limited to providing required onsite parking, garbage / recycling and service vehicle loading spaces.

First, RMC 15.08.070, Complete application for permit, states: "Determination of whether a building permit application is complete for purposes of administering Redmond Zoning Code Chapter 21.76, Review Procedures, shall be made by the Building Official and shall be based upon the adopted building codes." Any modification to an issued building permit (or other permit) requires an administrative modification application, per RZC 21.76.090.D., which states:

D. Administrative Modifications.

1. Purpose. The purpose of this section is to establish a procedure to allow modification to an approved project.

2. Scope. This section governs requests to modify any final approval on a project granted pursuant to this chapter of the RZC, excluding all approvals granted by passage of an ordinance or resolution of the City Council. For Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances, see RZC 21.68.200.C.8.

3. Procedure.

a. Applications that seek administrative modification that meet the criteria below shall follow the procedures established in RZC 21.76.050.G for a Type II permit process, without the requirement for public notification

b. Applications that seek administrative modification for additional square footage shall follow the procedures established in RZC 21.76.050.G for a Type II permit process.

4. Decision Criteria.

a. The Administrator may determine that an addition or modification to a previously approved project or decision will require review as a new application rather than an administrative modification, if it exceeds the criteria in subsection D.4.b below.

i. If reviewed as a new application rather than an administrative modification, the modification shall be reviewed by the same body(ies) that reviewed the original application. If the application resulting in the approval which is the subject of the request for modification was reviewed by the Design Review Board, then the Board shall review the request and make its recommendations to the appropriate body. The criteria for approval of such a modification shall be those criteria governing original approval of the permit which is the subject of the proposed modification.

b. A proposed modification or addition will be decided as an administrative modification, if the modification meets the following criteria:

- i. No new land use is proposed;
- ii. No increase in density, number of dwelling units, or lots is proposed;
- iii. No changes in location or number of access points are proposed;
- iv. No reduction in the amount of landscaping is proposed;
- v. No reduction in the amount of parking is proposed;
- vi. No increase in the total square footage of structures to be developed is proposed; and
- vii. No increase in height of structures is proposed to the extent that additional usable floor space will be added.

5. A modification that does not meet the criteria in subsection D.4.b of this section, but does not add more than the lesser of 10 percent or 6,000 gross square footage, may be reviewed as an administrative modification, as approved by the Administrator.

(Emphasis added.) Based on an initial review of the materials submitted by the Applicant and attached to the pleadings filed yesterday, it appears that the Applicant has (1) failed to file an actual application for an administrative modification, and (2) the proposed modification to approved building permit BLDG-2016-09802 exceeds will result in an increase in retail floor area over the approved permit and still has the mezzanine (even if the Applicant claims that it will not be used for anything other than roof access). A new application is required.

Also, this modification cannot be processed as an administrative modification without a new permit because it changes the location and number of access points proposed and increases the total square footage of structures to be developed. Further, because the land use is changing from warehouse / storage to retail and retail marijuana sales use, the proposed modification does not meet the requirements of an administrative modification.

Additionally, the existing building permit does not allow for any exterior modifications. The proposed changes will result in significant interior and exterior modifications and will require both a Site Plan Entitlement permit and Design Review. RZC 21.76.070.Y., Site Plan Entitlement, states in relevant part:

2. Scope. Review and approval of a Site Plan Entitlement is required for any public, semi-public, or private proposal for new construction or exterior modification to a building or site, including multifamily, attached dwelling units in non-single-family zones, commercial, industrial, utility construction, expansion, or exterior remodeling of structures, parking, or landscaping, where the proposed use is shown as permitted in the applicable permitted use chart. All of the above projects require the review and approval of a Site Plan Entitlement except for:

- a. Detached single-family residential buildings.
- b. Tenant improvements not encompassing or requiring modification to the exterior of an existing building; and
- c. Any action noted above which meets the criteria to be reviewed as an Administrative Modification as provided in RZC 21.76.090.D.

(Emphasis added.) The proposed revisions clearly entail “exterior modification to a building or site,” “exterior remodeling of structures” and/or “modification to the exterior of an existing building.”

Finally, the City requires Design Review for the proposed modifications. RZC 21.76.020.E.2., states:

2. Applicability. Compliance with RZC Article II, Design Standards, shall be required for all applications requiring a building permit for exterior modifications, new construction and signs, projects requiring a Level II or III Certificate of Appropriateness, and any private or public development within the Shoreline Jurisdiction. The following are exempt from this requirement:

- a. One- and two-unit residential structures unless the structure is a historic landmark; and
- b. Tenant improvements not associated with a historic landmark or not encompassing modifications to the exterior of an existing building.

(Emphasis added.) The proposed modifications clearly require a building permit for exterior modifications, and Applicant still needs a sign permit, too.

Substantively, the revised application does not comport with the City’s Design Guidelines for the site (see RZC Chapter 21.60 and RZC 21.62.020) and is subject to Design Review, per RZC 21.76.020E., which provides in part:

3. Review Authority.

- a. The Design Review Board shall have design review authority over all applications not exempt under subsection E.2 above that require a building permit and that have a total valuation of \$50,000 or more, except for the following:
 - i. Signs (other than sign programs); and
 - ii. Commercial buildings located within the Industrial (I) zone, unless the site is located in areas of high public visibility such as arterials.
- b. The Landmarks and Heritage Commission shall have design review authority over designated historic landmarks as outlined in RZC 21.76.060.H, 21.76.060.J, and 21.76.060.M.
- c. The Administrator shall have design review authority on all building permit applications that have a total valuation of less than \$50,000 and are not specifically exempt from design review in subsection E.2 above.
- d. For projects reviewed by the Administrator that are not in compliance with the applicable design standards, the Administrator may refer the application to the Design Review Board for consultation. For Level I Certificates of Appropriateness, the Administrator may consult with or use the authority of the King County Historic Preservation Officer or other preservation expert with similar qualifications.

4. Procedure. Design review requiring review and decision by the Design Review Board shall be conducted as provided in RZC 21.76.060.G.

(Emphasis added.) The \$50,000 threshold is for the value of the building permit improvements, not just the exterior improvements. In this case, Applicant's building permit improvements as a whole as well as just those items that are for the exterior exceed \$50,000 in value. In fact, Applicant has already spent more than \$50,000 on necessary plumbing and structural improvements under the existing building permit, and Applicant will spend another \$50,000 on a required HVAC system and over \$80,000 on basic lighting and electrical system items to make the building habitable. Applicant's self-serving and unfounded \$43,500 estimate does not pass the smile test.

Please see attached professional cost estimate, which we submit for the record and to facilitate review. We also submit a parking / trip generation analysis for consideration during the review.

In sum, Applicant cannot revise an existing approved building permit without going through the administrative modification permit process. Applicant cannot make any exterior modifications without a Site Plan Entitlement permit, and Applicant is subject to Design Review. The revised permits should be properly submitted, and the City must provide public notice per RZC 21.76.080 within 14 days of determining the required applications are complete.

Respectfully yours,

Schwabe Williamson & Wyatt

Aaron M. Laing

Shareholder

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alaing@schwabe.com

Ideas fuel industries. Learn more at:
www.schwabe.com

From: Laing, Aaron M.
Sent: Monday, May 08, 2017 4:27 PM
To: dpkenny@omwlaw.com; James E. Haney Esq.; Duana Kolouskova; Vicki Orrico; GLEE@REDMOND.GOV
Cc: Anderson, James C.; Mr. Kevin R. Wallace
Subject: Re: In the Matter of the appeal of WPDC Cleveland LLC - Case No. BLDG 2016-09802

Dear all,

We respectfully request (again) that WPDC Cleveland, LLC be made a party of record to the two permit files associated with this appeal and that we receive notices of any and all applications and decisions related to the two permits and any modifications and / or revisions thereto.

Please confirm receipt of this email and that our request will be honored.

Best regards,

Aaron M. Laing
Attorney
Schwabe, Williamson & Wyatt, PC

Sent from my iPhone
206.450.0950

On May 8, 2017, at 4:01 PM, Gloria J. Zak <gzak@omwlaw.com> wrote:

Attached is Redmond's Response to Motions for Partial Summary Judgment and Supporting Declarations.

Gloria Zak, Legal Asst.

Gloria J. Zak : Municipal Legal Assistant

Ogden Murphy Wallace P.L.L.C.
901 Fifth Avenue, Suite 3500 Seattle, WA 98164
phone: 206.447.7000 | fax: 206.447.0215
gzak@omwlaw.com | omwlaw.com

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<DECLARATION OF JOZANNE MOE WITH ATTACHMENTS
(1578543x7ACF2).pdf.attachctrl>

<DECLARATION OF GARY LEE WITH ATTACHMENTS (1578541x7ACF2).pdf.attachctrl>

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Attachment 4

BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the SEPA Appeal of

File Nos: BLDG-2016-09802
BPLN2016-02092

WPDC CLEVELAND, LLC

of approved Building Permit BLDG-2016-09802/BPLN-2016-02092 authorizing alterations to the structure at 16390 Cleveland Street, Redmond
Issued February 17, 2017.

**APPELLANT WPDC CLEVELAND,
LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I. SUMMARY

Over a nine-month period beginning in June 2016, the City conducted a surreptitious, piecemeal review of the Origins Cannabis project's proposed conversion of an abandoned warehouse into a marijuana retail sales business ("Project"). Along the way, the City disregarded basic permit processing, notice and substantive code requirements, culminating in the approval of limited interior renovations for a non-code-compliant building. Confronted with the deficiencies in the process and application, the City issued a "stop work order" for some improvements. Applicant then withdrew the required Site Plan Entitlement application for all remaining improvements (e.g., windows and doors) needed to make the building habitable and code-compliant. The Project cannot proceed "as-is" or at all. Appellant respectfully requests that the Hearing Examiner grant this motion, reverse the City's decision to issue the building change of use permits, and issue a stop work order.

APPELLANT'S MOTION FOR PARTIAL SUMMARY
JUDGMENT - 1

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
US Bank Centre
1420 5th Ave., Suite 3400
Seattle, WA 98101-4010
206.622.1711

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IV. MATERIAL FACTS

In addition to the facts set forth in the Appeal, Appellant respectfully requests that the Hearing Examiner consider the following material facts on four key topics: the Project Site's Existing Conditions & History, Application and Process Issues, the Redmond Downtown Park, and Deficiencies & Impacts.

A. Project Site's Existing Conditions & History

The Origins Cannabis Project is proposed to be located in an existing, abandoned warehouse building at 16390 Cleveland Street, Redmond, WA 98052, King County tax parcel number 719880-0085 (the "Project Site"). *See* Appeal. Appellant owns the adjacent abutting parcel to the Project Site, which parcel is located at 16330 Cleveland Street (the "WPDC Property"). *See id.*, Wallace Decl., ¶¶ 2-4, Ex. A. The WPDC Property and the Project Site are in the City's Downtown – Old Town ("OT") zone. *See* Appeal. The WPDC Property is developed with a retail building and associated surface parking, and it is occupied by the locally-owned Prime Steakhouse restaurant. *See* Appeal; Wallace Decl., ¶ 4; Bailey Decl., ¶¶ 2-3. The WPDC Property surrounds and abuts the Project Site on the west and north sides; the parking lot and garbage / recycling areas of the WPDC Property abut the exterior of the building on the Project Site. *See id.*

The Project Site has no onsite parking and no exterior garbage / recycling facilities; the Project Site has no easement rights over any portion of the WPDC Property, other than a +/- five-foot (5') wide maintenance easement around the exterior. *See* Appeal; Wallace Decl., ¶¶ 2-5, Ex. A. The easement cannot be used for construction, parking, garbage / recycling, deliveries or any other purpose other than to maintain the exterior of the existing building. *See id.*

The abandoned warehouse on the Project Site has not been occupied or used for any City-authorized or permitted use since at least January 1, 2000. *See* Laing Decl., ¶¶ 2-3, Ex. A. Local architect Rick Driftmier, whose offices have been located near the Project Site

1 since 2002, has not seen any businesses operating in the old warehouse for at least the past
2 15 years. *See* Driftmier Decl., ¶¶ 1-7. Public records for the Project Site for activities in the
3 warehouse over the past 17 years include code enforcement records and police records for
4 unauthorized activities in the building. *See* Laing Decl., ¶¶ 2-3, **Ex. A**.

5 Since the outset of this process last June, the City and the Project proponent have
6 repeatedly and unequivocally recognized that the prior / existing use of the building was for
7 warehouse / storage, not for retail, and that a land use permit was required. *See generally*
8 Laing Decl., ¶¶ 4-20, **Exs. B-R**. On June 6, 2016, applicant owner / agent Sean Miller sent
9 an email to the City, with the following questions “regarding a use change and remodel
10 we’re looking to begin”:

11 1. **The property does not currently have water or sewer inside the**
12 **building.** Are water and sewer available and what will be the
approximate fees to bring them to the site?

13 2. **For a use change from warehouse to retail are Water and Sewer**
14 **required?**

15 *See* Laing Decl., **Ex. B** (emphasis added). In response to follow-up questions from City
16 Engineer Min Luo and City Planner Gary Lee, on June 13 and 15, 2016, Mr. Miller further
17 explained:

18 . . . I estimate approximately 60-75 customers per day would be entering the
19 facility. **It will be used for retail purposes. The building currently is used**
20 **for warehouse space and office space. . . . So it will be converting [from]**
warehouse to retail. . . .

21 We are simply looking to remodel the interior and exterior. We are looking to
22 improve the property by bringing in water/sewer and installing a bathroom.
23 We envision keeping the old town theme and putting a reclaimed and or
wood/brick exterior façade. We are looking to set the building up for retail
sales

24 The major dilemma we are trying to deal with is the parking.

25 *See id.* (emphasis added).
26

1 On July 5, 2016, Mr. Lee responded that, because the “property has been grand-
2 fathered regarding parking in the past . . . **no parking would be required for this building**
3 **as general retail/office use**” and referenced required frontage improvements, due to the
4 value of the proposed Project. *See id.*, **Ex. C** (emphasis added). Two weeks later, in
5 response to inquiry from Applicant’s attorney Vicki Orrico, Mr. Lee further explained both
6 that “parking had been grandfathered for the existing square footage of the building” and
7 that “**The anticipated exterior modifications to the building will require an**
8 **Administrative Modification application review approval (prior to issuance of a**
9 **building permit)**, which also requires Design Review by the Design Review Board.” *See*
10 *id.*, **Ex. C** (emphasis added).

11 **B. Applicant and Process Issues**

12 On July 29, 2016, City Development Services Center Supervisor Carol Lewis
13 assigned City Building Plans Examiner Janise Goucher to the “land use permit” for the
14 Project under permit file number “LAND-2016-01420 Andorra.” *See* Laing Decl., **Ex. D**. On
15 August 9, 2016, City Public Works Project Manager Lisa Singer emailed Mr. Lee regarding
16 the pre-application meeting for permit number LAND-2016-01420, asking whether Mr. Lee
17 had spoken to “utilities about [the Project’s] water and sewer connection” or asked Applicant
18 whether “they are ok with chopping off the building and doing the frontage improvements?”
19 *See* Laing Decl., **Ex. E**.

20 On September 1, 2016, Ms. Goucher and City Plans Examiner Anita Randall held a
21 “pre-application meeting for Andorra (16390 Cleveland)” and learned *for the first time* that
22 Applicant proposed to have “recreational cannabis” as the use. *See* Laing Decl., **Ex. F**. Ms.
23 Goucher then emailed City Planner Jason Rogers to confirm that the location was approved
24 for recreational marijuana retail sales, who responded that “The location is acceptable for
25 retail marijuana” and that he had “also conveyed to anyone who asked that the site/building
26 is extremely challenging, but I’m not sure that part of my message gets received ☺” *See id.*

1 That same day, City Building Code Enforcement Officer Deborah Farris emailed Ms.
2 Goucher and Ms. Randall to direct them to the City's retail marijuana regulations structural
3 requirements in Redmond Zoning Code (RZC) 21.41.050, which require that "... marijuana
4 retailers must operate in a permanent structure designed to comply with the City Building
5 Code." *See* Laing Decl., **Ex. G**.

6 Between November 7 and 17, 2016, Mr. Lee, Mr. Miller and various City officials
7 exchanged emails about the value of the proposed Project's improvements and the value of
8 the existing warehouse building to determine whether and to what extent frontage and other
9 improvements would be required. *See* Laing Decl., **Ex. H**. Mr. Miller provided the City an
10 October 3, 2016 Appraisal Report prepared by CJM for Andorra Ventures LLC for the
11 Cleveland Street Building located at 16390 Cleveland Street, Redmond, WA ("Appraisal
12 Report"), and Mr. Miller represented to the City that he estimated the value of the
13 improvements at \$131,977. *See* Laing Decl., **Exs. H & Y**. The Appraisal Report set the
14 building value at \$250,000 using a cost approach; the City estimated its value (based on the
15 cost to rebuild) at \$158,833.11 or \$198,140.40. *See id.*

16 The Appraisal Report's author wrongly assumed that the existing warehouse had
17 water / sewer, stating "Public services are present and service is adequate." *See* Laing Decl.,
18 **Ex. Y** at 5, 26. The Appraisal Report also repeatedly states, "**According to Mr. Miller, the**
19 **estimated renovation budget is \$235,000 with a construction timeline of 12 to 14**
20 **weeks.**" *See id.*, **Ex. Y** at 5, Existing Condition, 29, & 62. The Appraisal Report also states:
21 "**The intended use of this appraisal is to assist in establishing market value for**
22 **acquisition purposes. The report is intended for no other use.**" *See id.*, **Ex. Y** at 11
23 (emphasis added).

24 Professional construction cost estimator Matthew Woolsey of The Woolsey
25 Company has prepared a Unit Cost Estimate for the improvements identified in the Origins
26 Cannabis approved building permit submittal and the related (now withdrawn, as detailed

1 below) Design Review Board submittal. *See* Woolsey Decl., ¶¶ 2-10, **Exs. A-I**. According
2 to Mr. Woolsey, the actual, conservative value of the Origins Cannabis Project’s approved
3 and planned improvements is \$545,603—more than twice the estimated value of the existing
4 warehouse building. *See id.*, ¶ 10, **Ex. I**.

5 On December 9, 2016, Applicant submitted applications for the Origins Cannabis
6 Project’s building permit (BLDG-2016-09802) and change of occupancy permit (BPLN-
7 2016-02092 to change the use from “warehouse” to “retail.” *See* Laing Decl., **Ex. P**. There
8 is no reference to the “land use permit” number “LAND-2016-01420 Andorra” (the permit
9 number assigned in July and used for the pre-application conference) in any of Applicant’s
10 building permit or change of use permit submittal materials; there is no reference to the
11 proposed use being “marijuana retail sales” use in any of the building permit or occupancy
12 permit submittals—the permits only reference “retail suites, storage and office.” *Compare*
13 Laing Decl., **Ex. D**. *with Ex. P*.

14 On January 4, 2017, City Planner Cameron Zapata emailed Mr. Miller the following:

15 Hi Sean,

16 Per our phone conversation, I am sending this email to recap what we had
17 discussed.

- 18 • **The previous use was storage/warehouse.**
- 19 • **The retail marijuana shop will only be going in retail space A,**
20 **however since the entire space is changing occupancies, impact**
21 **fees will be generated for the whole structure.** Please see the
22 attached impact fee estimate.
- 23 • **The exterior improvements can be a separate permit, however the**
24 **drawings will be required to be updated to *only* reflect the interior**
25 **improvements.** An issue matrix will be sent to you by Jozanne Moe
26 (plans examiner) once all reviewers have completed their review and
this comment will be included in the matrix.
- **We had also discussed that the exterior work will require [you] to**
go through the Design Review Board, I have attached the

1 application and schedule to this email for your reference. The
2 approval of the DRB will hold up the approval of the exterior
3 alteration permit. . . .

4 See Laing Decl., **Ex. I.** (italics in original; bold / underlining added). In response, Mr. Miller
5 asked if his “architect could redraft the drawings only showing the interior modification” and
6 explained that the “application was intended to be for the interior only with only replacing
7 doors and windows on the exterior.” See *id.* Ms. Zapata responded, stating “Hi Sean, Any
8 work on the exterior is considered a commercial exterior alteration permit. So if it (is)
interior only then windows would not be included.” See *id.*

9 On January 12, 2017, Mr. Miller’s architect Tom Morris followed up with Ms.
10 Zapata by email, proposing the following solution to the interior versus exterior permit issue
11 raised on the 4th:

12 Hi Cameron,

13 Regarding your comments on the Origins Tenant Improvement
14 project, **this existing building is currently unheated with a simple sliding**
15 **barn door assembly-which would not be appropriate for a retail**
16 **establishment. Is it acceptable to simply cloud the exterior storefront**
17 **portion of work and identify is as “work to be done under a separate**
permit”? The reasons are the energy calculations need to be completed based
on this design. . . .

18 See Laing Decl., **Ex. J.** (emphasis added).

19 Per this exchange, the Site Copy of the approved architectural plans for the Project
20 dated January 25, 2017 state in red letters in cloud boxes “Interior Only Permit,” “All
21 exterior work is under a separate permit,” “PL: Exterior modifications are not to be included
22 within this permit,” all windows, doors and other exterior features are placed in “cloud”
23 outlines with the statement “NOTE: ALL EXTERIOR WORK TO BE SUBMITTED
24 UNDER A SEPARATE PERMIT APPLICATION.” See Woolsey Decl., **Exs. A.** The
25 designs and materials for the exterior work (*i.e.*, windows, doors, cladding, *etc.*) were
26

1 submitted for review by Morris Architects on March 21, 2017 under Site Plan Entitlement
2 permit number LAND-2017-00290. *See* Laing Decl., Ex. R; *see also* Woolsey Decl., Ex. H.

3 Between January 25, 2017 and February 10, 2017, City review staff also determined
4 that the Project was erroneously exempted from transportation impact fees, after Mr. Lee
5 raised the following question:

6 **For this cinderblock building that was used as warehouse (not retail**
7 **sales) should we charge them impact fees for retail sales for all of their**
8 **square feet? And give them credit for “warehousing/storage” for all of**
9 **the existing square feet?**

10 *See* Laing Decl., Ex. K (emphasis added). City Engineer / Planner Andy Chow also asked
11 whether Applicant submitted any sort of transportation impact study (e.g., a “trip general
12 report”) to show that estimated PM peak hour trips would not exceed 30 but received no
13 response. *See id.*

14 Professional transportation engineer Michael J. Read of Transportation Engineering
15 NorthWest (TENW) has prepared a Comparative Trip Generation and Parking Generation
16 Analysis for Origins Cannabis Project. *See* Read Decl., ¶¶ 2-7, Exs. A-D. Noting that
17 “marijuana retail sales” is not a use that has been studied or included in current professional
18 publications, Mr. Read conducted site surveys of existing marijuana retail sales businesses
19 nearby and in the Puget Sound area. *See id.* Mr. Read concluded the following:

20 Based on the evaluation of standard ITE trip generation and parking
21 generation rates as well as observed marijuana retail stores at other
22 representative locations within the Puget Sound region, **the proposed**
23 **Redmond Origins project is estimated to generate approximately 120 new**
24 **weekday PM peak hour trips (61 entering, 59 exiting), which would**
25 **trigger both a review of transportation concurrency and traffic**
26 **operational impacts under City code.** As noted in the evaluation,
27 **proposed marijuana retail use has substantially higher vehicle trip**
28 **generation (by more than a factor of 10) than typical retail uses and a**
29 **significantly higher trip generation rate (by more than a factor of 100) in**
30 **contrast to historical warehouse uses.**

1 Peak demand of parking generation is estimated to range between 21 and
2 27 stalls during the p.m. peak period of adjacent street traffic. Given that
3 no on-site parking is available to the subject property, parking impacts
4 would occur to both public on-street parking as well as available private
5 parking lots immediately adjacent to the site and the vicinity, resulting in
6 significant impacts.

7 *See id.*, **Ex. D** (emphasis added).

8 On February 22, 2017, Appellant WPDC first learned of the Origins Cannabis
9 Project when Kevin Wallace received an email from Mr. Driftmier, who alerted Mr. Wallace
10 that construction activities were occurring in the building on the Project Site. *See* Wallace
11 Decl., ¶ 7; Laing Decl., **Exs. L & M**; Driftmier Decl., ¶ 4. As of that date, WPDC had not
12 received any notice of any permit application or permit approval for any activity on the
13 Project Site from the City of Redmond. *See* Wallace Decl., ¶ 7.

14 On February 24, 2017, Mr. Wallace contacted Mr. Lee to inform him that WPDC
15 would file an appeal and asked that, as a courtesy, Mr. Lee notify Applicant to avoid
16 Applicant incurring any unnecessary expense. *See id.*, ¶¶ 7-8, **Ex. B**; *see also* Laing Decl.,
17 **Exs. L & M**. Mr. Lee then notified Mr. Miller of the forthcoming appeal and separately
18 notified City Assistant Development Director Jason Lynch and Ms. Lewis that the City had
19 erroneously issued the Origins Cannabis building permit for the interior improvements
20 without requiring at least one parking stall for the proposed mezzanine. *See* Laing Decl.,
21 **Exs. L & M**. Following an internal exchange with Mr. Lynch and Ms. Lewis, Mr. Lee then
22 informed Mr. Miller and Applicant's attorney Ms. Orrico that the City had "issued [the
23 tenant improvement permit] in error" and that the representation in July 2016 regarding
24 "grandfathered" parking did not apply to the mezzanine as "no mezzanine was proposed at
25 that time." *See id.*, **Ex. L**.

26 In notifying Mr. Miller of the forthcoming appeal from WPDC, Mr. Lee explained:
"Because you are required to have an approval of a pending Administrative Modification
application to modify the exterior, I believe that [Mr. Wallace] will also appeal that

1 approval. His appeal(s) will then require a hearing by the Hearing Examiner.” *See* Laing
2 Decl., **Ex. L**.

3 On March 3, 2017, the City issued a “stop work order” for the mezzanine
4 improvements but allowed the remainder of the interior improvement work to continue. *See*
5 Laing Decl., **Exs. N & P**.

6 On March 21, 2017, Applicant submitted an application for the Andorra Site Plan
7 Entitlement, permit number LAND-2017-00290, to allow for the proposed exterior
8 improvements to be reviewed, per Mr. Lee’s direction to Mr. Miller on July 5, 2016. *See*
9 Laing Decl., **Exs. C & R**; *see also id.*, **Exs. I-J**.

10 On April 6, 2017, the City of Redmond Design Review Board held a public hearing
11 on the Site Plan Entitlement application for the Project. *See* Laing Decl., **Exs. R & Z**;
12 Wallace Decl., ¶¶ 10-11, **Ex. C**; Woolsey Decl., **Ex. H**. During the public hearing, Mr. Lee
13 responded to questions from the Design Review Board and made the following comments
14 about the Origins Cannabis Project’s application submittal materials, the City’s processing
15 of the same and the next steps in the process (identified by page and line number from the
16 official transcript of the recording):

17 **Page 5**

18 5 **MR. LEE:** I’m Gary Lee, City of
19 6 Redmond, and this is the Andorra project. This is the
20 7 exterior remodel of the existing (indiscernible) on
21 8 Cleveland Street. And we have a sign-in sheet for
22 9 people who would like to speak to this. And I would
23 10 like to address a couple things first.

24 **Page 6, line 17 – Page 7, line 4 (MR. LEE)**

25 17 So specifically addressing the parking
26 18 and garbage comments. Parking, the building has
19 nonconforming parking status. **They do have to provide**
20 **additional parking for the addition of the mezzanine.**
21 They can provide or with that right obtain parking off

1 22 site by an easement or agreement from a neighbor who
2 23 would grant that to them for (unintelligible) or
3 24 whatever the agreement is.
4 25 **There may be a requirement for**
5 1 **additional parking for the marijuana retail sales use.**
6 2 They would have to provide that required parking in
7 3 the same manner, by agreement off site agreement with
8 4 a neighbor.

9 **Page 8, line 3 – Page 9, line 2**

10 3 **CHAIRMAN MEADE: Why is it not all up**
11 4 **together?** Is there a potential for a different
12 5 tenant?

13 6 MR. LEE: Yes, it is. The remaining
14 7 portion. And Applicant can speak to that too. It
15 8 can actually be marijuana may not go in there. It
16 9 could be tennis shoes or bubble gum, but they also,
17 10 they have a intent to include marijuana as in one of
18 11 the lease spaces.

19 12 CHAIRMAN MEADE: I see.

20 13 **MALE VOICE: I have a question. I'm**
21 14 **just curious as to why that we didn't do, like, a**
22 15 **preapplication review of this? Why the move straight**
23 16 **to approval for tonight?**

24 17 MR. LEE: That's a good question. We
25 18 did have a preapplication meeting, but not with the
26 19 Design Review Board earlier in the year, and at that
27 20 point the revisions weren't as dramatic or
28 21 (unintelligible).

29 22 **They jumped the gun. They submitted a**
30 23 **building permit application and the -- we issued a**
31 24 **part of the building permit and then there was an**
32 25 **appeal on that building for the application. So now**
33 1 **we've kind of gotten ourself all twisted up in time**
34 2 **and processing. So we jumped into just approval.**

35 **Page 37, line 11 – Page 39, line 7**

36 11 CHAIRMAN MEADE: Okay. I have a
37 12 couple of follow-up questions here. You said the --
38 13 I'm not sure how the evaluation was shown for the
39 14 building originally. The King County (unintelligible)
40 15 shows that it's a \$23,500 building, with a \$329,000

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16 lot. What is -- what has the appraisal been delivered
17 to you, and...

18 MR. LEE: Yeah, Applicant provided
19 us some appraisal numbers. Had an appraisal. I have
20 some numbers that they have provided to us at a
21 \$250,000 value. Before requiring the appraisal, we
22 had our building department do a replacement cost
23 value on the building and it came up pretty close, so
24 that's, that's (unintelligible).

25 CHAIRMAN MEADE: I know some
1 municipalities are required to provide an estimate
2 appraisal from a professional in this situation to
3 show that we're in compliance. It would appear that
4 -- I don't know what the budget of their project is,
5 but it does appear that it's going to exceed. Is it a
6 hundred percent of the value of the building before
7 you have to?

8 MR. LEE: A hundred percent of that,
9 yeah. So that's -- they still haven't provided us
10 with the right cost estimate, so that, that's going to
11 have to be provided to us.

12 CHAIRMAN MEADE: Yeah.

13 MR. LEE: But the original early
14 estimates, of which Mr. Laing referred to, that was
15 very early on and was, I'm sure, very, you know, bare
16 bones. So it's gotten a lot bigger now.

17 So that is a big question now whether
18 or not they will be equaling or exceeding that value.

19 CHAIRMAN MEADE: Yeah. I would
20 suggest the city staff should have a continuing
21 understanding of what the budget is.

22 I attempted to do a project down the
23 street on a similar building -- I don't know -- five
24 years ago and it didn't pass, though, because we would
25 have had to tear a corner of the building down before
1 the sidewalks were done. There was no power, there
2 was no water. The building was uninsulated.

3 It was a very interesting kind of
4 building, just right behind the old Redmond hotel, and
5 I know that we were going to be right at the valuation
6 and beyond really quickly with the modest
7 (unintelligible) of that space, so...

CHAIRMAN MEADE: Gary, while they're looking, can you talk to us about the hearing examiner meeting? What --

MR. LEE: Sure.

MALE VOICE: -- would be happening and so forth, where they are in that process.

MR. LEE: So where we are right now is we got, like, extended the hearing to a date which would hopefully include the conclusion of this (unintelligible) timeline, which would be the issuance of the decision on this, so that that decision is appealable and at that time that we would have the hearing.

So as we mentioned earlier, we had an appeal on a building permit and the building permit appealed basically all the things that we're talking about here, parking, marijuana use, and the appeal is somewhat not ripe for appeal because the land use permit should be building first and then consolidating all the issue into one appeal hearing.

So the appeal hearing will probably be extended. We do have a request for information regarding traffic. So that the take up committee will be asking for some more information regarding the traffic impact analysis; therefore, probably will have -- definitely have to reschedule the hearing to get that material in and reviewed before a decision is issued.

So people usually don't appeal building permits. Just have that's what they appeal here. They usually appeal land use permits, and usually there's a land use permit that has the public notice that goes out. So there was a mistake here in that the building permit was issued for the tenant improvement prior to this.

There should have been this site plan entitlement application or administrative modification application submitted before the building permit was issued. So trying to get that all taken care of.

CHAIRMAN MEADE: So, I'm sorry. Just to follow up on that a little bit. So was the city -- what is the city going to do or what is the city

14 currently doing with the building permit application?
 15 MR. LEE: The building permit
 16 application that was appealed for was a tenant
 17 improvement for the interior only including this
 18 mezzanine. There was a plan shown for the exterior
 19 modifications, but we told them we cannot issue that
 20 permit until this application is submitted.
 21 So they gave -- so the building permit
 22 that was issued was only for the inside, okay, and
 23 since that building permit was issued and since they
 24 have appealed that, we have issued a notice of
 25 correction on that interior building permit that said
 1 you continue -- you continued to work -- you can
 2 continue to work on the inside, but not on the
 3 addition of the mezzanine, because the mezzanine
 4 requires additional parking stall.
 5 You need to provide us with the proof
 6 that you have additional parking stall, by an
 7 agreement, by easement, and you have to have this
 8 application approved first.
 9 CHAIRMAN MEADE: One more question.
 10 On the tenant improvement plans, did that call for
 11 plumbing and power, heating?
 12 MR. LEE: So with this -- yes, yes.
 13 And there will be some construction plan that will
 14 require mutual hookups. As far as this, there will be
 15 some more construction review to provide all necessary
 16 water service, because that's -- the building permit
 17 application is for a change in occupancy from a
 18 warehouse to a commercial space that requires
 19 plumbing.

Page 45, line 17 – Page 47, line 2

17 MR. KRUEGER: Well, I'm not ready to
 18 vote on this. I want this to go through the normal
 19 procedures. I want to know how this fits in with the
 20 current historic core versus what planning commission
 21 might be reviewing it and adopting.
 22 I mean, it needs to be -- you know,
 23 per what was in place when they made their application
 24 that they're making and, you know, it would need to
 25 have a staff letter and recommendation, an explanation
 1 on exactly how it does meet the different aspects of

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the design guidelines.
I mean, they can go ahead with the improvements on the inside, I mean, if they want to take the chance of doing that, I guess, if that's been, been issued, but as far as the exterior and the outside, just go and have a complete application that shows us, you know, all the different aspects that we're going to want to see.

CHAIRMAN MEADE: Yeah, I agree. I mean, coming from a place, obviously, (unintelligible) it's kind of gotten out of hand where it should be.

I consider that the valuation is really that the building has to be replaced or comport to code, because I'm not certain that that valuation of the project is, is -- the project is.

(Unintelligible) knowing what's remained of this building, seeing these plans, I don't see the building remaining. Some (unintelligible), some walls. Utilities, new systems, new windows, new structure. It's a whole new everything. It's a new building, so...

On top of that, we need a complete submittal to see all the elevations of the building, including roof, so we can see what's going on (unintelligible) about, what other treatments (unintelligible).

See Laing Decl., Ex. Z (emphasis added).

On April 13, 2017, City of Redmond Mayor John Marchione responded to a citizen comment from a local business owner regarding the Origins Cannabis Project, saying

Cliff,

Thank you for your email. So far, the City has only authorized remodeling of the interior. We have not authorized any use beyond storage. If the owner wants to use the building for retail uses he would have to make upgrades, including providing for parking.

As part of the review process for this property, City staff will be analyzing the parking. I appreciate your comments and will share them with staff.

See Laing Decl., Ex. Q (emphasis added).

1 On April 20, 2017, Applicant withdrew the Site Plan Entitlement application and
2 informed all parties to the appeal that it “would not be refiling it”; the City notified parties of
3 record, including Appellant WPDC, by letter dated April 25, 2017. *See* Laing Decl., **Exs. O**
4 **& AA.**

5 **C. Redmond Downtown Park**

6 On April 21, 2015, the Redmond City Council unanimously approved the adoption
7 of the Redmond Downtown Park Master Plan for a new park located at 16101 Redmond
8 Way, less than three blocks (about 800 feet) from the Origins Cannabis Project Site. *See*
9 Laing Decl., **Exs. S & X**; Wallace Decl., ¶ 16; Appeal. Among the elements of the approved
10 Master Plan, the Downtown Park will feature a splash playground for children described
11 variously as a “Water play area,” “splash pad” and “Fountains of water jets—Fun for the
12 kids!” *See* Laing Decl., **Exs. S, U, V & X.**

13 On August 5, 2015, the State of Washington Department of Commerce notified the
14 City that it had awarded the City a \$3,000,000 grant for the construction of the Downtown
15 Park. *See id.*, **Ex. T.** On August 1, 2016, the City issued the approved Site Plan Entitlement
16 permit for the Downtown Park; the Site Plan Entitlement application had been submitted on
17 June 13, 2016, and Mr. Lee served as the Planner. *See* Laing Decl., **Exs. U, V & X.** The
18 Site Plan Entitlement states on the fourth page that “This decision is not vested to the
19 development regulations in effect until a complete building permit application is submitted.”
20 *See id.*, **Ex. U.** On September 19, 2016 and October 24, 2016, the City’s Parks Department
21 submitted applications for the two building permits needed to construct two structures (a
22 restroom and a pavilion) within the Downtown Park. *See id.*, **Ex. W.** Construction of the
23 Downtown Park commenced in the fall of 2016 and is ongoing, with a projected opening
24 date in 2018. *See id.*

1 **D. Deficiencies & Impacts**

2 Local architect Rick Driftmier has reviewed the approved plans for the Origins
3 Cannabis interior renovation permit and determined the plans are deficient for several
4 reasons: the project's change of use requires the whole building to be brought up to current
5 code for Americans with Disabilities Act ("ADA") standards, energy code, International
6 Building Code and City zoning code requirements; the permit process / sequencing did not
7 follow City code; if the interior improvements are allowed to proceed without the required
8 exterior improvements, then the building will not meet energy code, plumbing, building
9 exiting or ADA requirements. *See* Driftmier Decl., ¶¶ 1, 2, & 5-7, **Ex. A**.

10 Since late-February 2017, representatives and contractors associated with Applicant
11 have repeatedly trespassed on the WPDC Property by parking in the Prime Steakhouse
12 parking lot while working in the building and by having materials and a porta-potty dropped
13 off in the parking lot. *See* Bailey Decl., ¶¶ 2-12; Keller Decl., ¶¶ 2-8, **Ex. A**; Wallace Decl.,
14 ¶¶ 2-14.

15 In early March, 2016, Mr. Miller approached Prime Steakhouse owner Jason Bailey
16 during lunch and asked to lease four spaces in the parking lot, stating that Mr. Miller's
17 customers "would park there anyway." *See* Bailey Decl., ¶ 6. On April 7, 2017, customers
18 for the Prime Steakhouse were unable to park in the lot for a lunch reservations and called to
19 cancel; Mr. Bailey went outside to check the lot and saw three persons exit the warehouse
20 building on the Project Site, enter three separate vehicles and leave. *See* Bailey Decl., ¶¶ 10-
21 11. The cancelled reservation resulted in an estimated loss of \$400 to \$600. *See id.*
22 Additional trespasses like this and other issues, such as the Project Site's lack of parking, a
23 loading / delivery area and garbage / recycling area are likely to occur and will further
24 impact the Prime Steakhouse and Appellant WPDC. *See* Bailey Decl., ¶¶ 2-12; Keller Decl.,
25 ¶¶ 2-8, **Ex. A**; Wallace Decl., ¶¶ 2-14; Read Decl., **Ex. D**.

1 Although Applicant asserted in the materials submitted to the Design Review Board
2 that it had obtained an offsite parking spot, to-date this does not appear to be true. *See*
3 Wallace Decl., ¶ 15, **Ex. D**.

4 **V. STANDARD OF REVIEW**

5 Summary judgment is appropriate when “there is no genuine issue as to any material
6 fact and ... the moving party is entitled to a judgment as a matter of law.” *See* CR 56(c);
7 *Donatelli v. D.R. Strong Consulting Eng'rs, Inc.*, 179 Wn.2d 84, 90, 312 P.3d 620 (2013).
8 Under Washington law, local ordinances are interpreted the same as statutes, and the
9 interpretation of “a municipal ordinance . . . is a question of law[.]” *City of Gig Harbor v.*
10 *North Pacific Design, Inc.*, 149 Wn. App. 159, 167, 201 P.3d 1096 (2009), *review denied*,
11 166 Wn.2d 1037, 217 P.3d 783 (2009)(internal citations omitted).

12 Reviewing bodies “construe zoning ordinances as a whole and reject any
13 unreasonable construction. [The] primary purpose in interpreting a zoning ordinance is to
14 ascertain the legislative intent. If the language is unambiguous, [the reviewing body will]
15 rely solely on the statutory language. When a statute or ordinance is unambiguous,
16 construction is unnecessary because the plain meaning controls.” *Id.*

17 In the present matter, two additional fundamental rules of statutory construction are
18 pertinent: (1) the legislative body (*i.e.*, the City Council) “is presumed to know the statutory
19 scheme at the time it decides to amend it,” and (2) the City Council’s use of different terms
20 in the code is presumed to have different meaning for such terms. *Id.* at 175, 183 (holding
21 Gig Harbor’s Hearing Examiner erred as a matter of law by ignoring code’s “plain language
22 meaning” and using similar but distinct terms “interchangeably”).

23 Finally, in applying and enforcing, local administrative staff is strictly bound by the
24 authority delegated to them through the plain, express language of the municipal code. *See*,
25 *e.g.*, *Graham Neighborhood Ass'n v. F.G. Assocs.*, 162 Wn. App. 98, 117-18, 252 P.3d 898,
26 *review denied*, 172 Wn.2d 1024, 268 P.3d 225 (2011). By statute, local governments have

Attachment 5

BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND

In the Matter of the SEPA Appeal of

File Nos: BLDG-2016-09802
BPLN2016-02092

WPDC CLEVELAND, LLC

of approved Building Permit BLDG-2016-09802/BPLN-2016-02092 authorizing alterations to the structure at 16390 Cleveland Street, Redmond
Issued February 17, 2017.

**APPELLANT WPDC CLEVELAND,
LLC'S RESPONSE IN OPPOSITION
TO APPLICANT'S MOTION TO
DISMISS**

I. SUMMARY

The City code requires Applicant to obtain a land use permit *prior* to obtaining a building permit or change of occupancy permit. Applicant knew this from the start but chose to proceed otherwise, going so far as to strategically abandon its Site Plan Entitlement permit in the face of public scrutiny. In the City's words, the Applicant "jumped the gun[, so] . . . we've kind of gotten ourself all twisted up in time and processing. . . . [T]here was a mistake here in that the building permit was issued for the tenant improvement prior to this. There should have been this site plan entitlement application [] submitted before the building permit was issued." Applicant cannot divest the Hearing Examiner of jurisdiction by gaming the permit process. Appellant respectfully requests that the Hearing Examiner deny Applicant's motion in its entirety, grant Appellant's cross-motion and require Applicant to follow the rules like everyone else.

APPELLANT'S RESPONSE IN OPPOSITION TO
MOTION TO DISMISS - 1

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1 Declaration of Aaron M. Laing and exhibits thereto; the Declaration of Kevin R. Wallace
2 and exhibits thereto; the Declaration of Michael J. Read, P.E. and exhibits thereto; the
3 Declaration of Matthew M. Woolsey and exhibits thereto; the Declaration of Jason Bailey;
4 the Declaration of Lee Keller and exhibit thereto; and the Declaration of Rick Driftmier,
5 AIA and exhibit thereto. These seven declarations and exhibits were filed on May 1, 2017.

6 Appellant further relies on the Second Declaration of Aaron M. Laing and exhibits
7 thereto filed with this response brief, the Hearing Examiner's March 17, 2017 Order Setting
8 Pre-Hearing Document Exchange Schedule and the Hearing Examiner's April 21, 2017
9 order in Response to Request for Hearing Examiner Action.

10 **IV. MATERIAL FACTS**

11 Appellant relies on the facts set forth in the Appeal and Appellant's May 1, 2017
12 Motion for Partial Summary Judgment as if fully set forth herein and the additional material
13 facts set forth below. By contrast, Applicant relies solely on the Declaration of Sean Miller
14 in Support of Respondent Andorra Ventures LLC's Dispositive Motion to Dismiss Errors of
15 Procedure, Fact and Law Nos. 1 Through 6, 8, 9, and 13, which does not contain any of the
16 factual allegations set forth in Section II of Applicant's brief, except the allegation that the
17 old warehouse building was subject to a lease that has since been terminated. *Compare*
18 *Miller Decl. with Motion to Dismiss at 2:1-4:2.* While the lease termination is a tacit
19 acknowledgement that there is a change in occupant / occupancy, Applicant makes no
20 argument based on the alleged lease or its termination. It's unclear why Applicant even
21 submitted the declaration or referenced it in its brief. What is clear, however, is that
22 Applicant is being parsimonious with the facts and persisting in its effort to piecemeal the
23 permit process to avoid both public review and complying with basic permit requirements.

24 Applicant complains that the City erred in issuing the building permit and change of
25 occupancy permit in the name of Origins Cannabis instead of Andorra. *See Motion to*
26 *Dismiss at 3:3, n.3.* Applicant then asserts—without any evidence—that “It is important to

1 note that (1) there is as yet no lease to or business permit application by Origins; and (2)
2 other tenants besides Origins will occupy portions of the building.” *See id.* Applicant
3 concludes, “Andorra cannot apply for a retail marijuana business license — only the retail
4 marijuana tenant may apply for such a license.” *See id.* at 3:18-19.

5 In reality, Sean Miller, a member of Applicant Andorra Ventures LLC, is the
6 Managing Partner of Origins Cannabis, an existing marijuana retail sales business in West
7 Seattle and the already-state-licensed and soon-to-be tenant of the Redmond Origins
8 Cannabis Project. *See* 2nd Laing Decl., **Exs. CC** (email from Mr. Miller using his Origins
9 Cannabis account); **LL** (City email identifying Mr. Miller as contact for “Future Tenant” of
10 “cannabis shop”); **NN** (Origins Cannabis website homepage); **TT** (email from Planning
11 Director Robert Odle confirming all four licenses for marijuana retail sales in Redmond have
12 been issued by the State, including for the Project Site).

13 All four of Redmond’s retail marijuana business licenses have been issued, and the
14 state stopped accepting applications for licenses as of March 31, 2016. *See id.*, **Exs. MM,**
15 **TT, WW, XX & YY.** The City does not require a business license for the proposed
16 occupant business in any part of the land use process for permitting or construction of a
17 space; rather, a potential business licensee “must confirm zoning requirements applicable for
18 [the proposed] location . . . in order [t]o confirm that the building, space, or suite is an
19 appropriate use for [the proposed] type of business.” *See id.*

20 In early April, Mr. Miller told a nearby Redmond business owner that the Redmond
21 Origins Cannabis shop would be opening in June 2017. *See id.*, **Ex. MM.**

22 The City and Applicant have known that the Origins Cannabis building permit and
23 change of occupancy permit were intended to allow for the operation of a retail marijuana
24 sales business on the Project Site since at least the September 1, 2016 pre-application
25 meeting with Mr. Miller. *See* 2nd Laing Decl., **Exs. DD, EE.** In preparation for the pre-
26 application meeting, Mr. Miller contacted the City on August 22, 2016 to verify whether the

1 Project Site “complies with i502 retail use”—that is, whether the Site is within any state-
2 required buffer. *See id.*, **Ex. CC**. After erroneously concluding that the Site is outside
3 required buffers, City staff correctly determined that, in addition to a building permit and
4 change of occupancy permit, “[Applicant] would be required to obtain any and all applicable
5 permits.” *See id.*, **Ex. EE**.

6 The City has consistently and unequivocally recognized that the Origins Project will
7 result in *both* a “change in occupancy” (*i.e.*, new tenants / occupants) and a “change in use”
8 (*i.e.*, change from warehouse / storage use to retail and other uses). *See, e.g.*, 2nd Laing Decl.,
9 **Exs. FF, JJ, TT**. On December 8, 2016, the day before Mr. Miller submitted the building
10 permit and change of occupancy permit applications, City Building Plans Examiner sent an
11 email with subject line “Andora (sic) “Origins’ Recreational Marijuana” to other staff to
12 alert them that “this permit will be coming in for a change of occupancy tomorrow 12/9/16.”
13 *See id.*, **Ex. FF**.

14 On January 4, 2017, City Planner Cameron Zapata emailed Mr. Miller the following:

15 Hi Sean,

16 Per our phone conversation, I am sending this email to recap what we had
17 discussed.

- 18 • **The previous use was storage/warehouse.**
- 19 • **The retail marijuana shop will only be going in retail space A,**
20 **however since the entire space is changing occupancies, impact fees will**
21 **be generated for the whole structure.** Please see the attached impact fee
estimate.
- 22 • **The exterior improvements can be a separate permit, however the**
23 **drawings will be required to be updated to only reflect the interior**
24 **improvements.** An issue matrix will be sent to you by Jozanne Moe (plans
examiner) once all reviewers have completed their review and this comment
will be included in the matrix.
- 25 • **We had also discussed that the exterior work will require [you] to**
26 **go through the Design Review Board, I have attached the application and**

1 schedule to this email for your reference. The approval of the DRB will
2 hold up the approval of the exterior alteration permit. . . .

3 *See* 2nd Laing Decl., **Ex. JJ** (emphasis added),

4 The City went on to confirm that the “change in use” from “warehouse” or “storage”
5 to “retail sales” would trigger a transportation impact fee. *See* 2nd Laing Decl., **Ex. KK**. In
6 an email exchange between January 25, 2017 and February 10, 2017, City Planner Gary Lee
7 raised the following questions:

8 **The cinderblock building was used for storage.**

9 What category should we charge them for impact fees, and should they be
10 given a credit for the existing storage use?

11

12 For this cinderblock building that was **used as warehouse (not retail sales)**
13 should we charge them impact fees for retail sales for all of their square feet?
14 And give them credit for “warehousing/storage” for all of the existing square
15 feet?

16 *See id.* (emphasis added).

17 In response, City Engineer / Planner Andy Chow stated: “**For the change of use,** it
18 will be subject to transportation impact fee if the **new use** will generate additional 30 peak
19 hour vehicle trips **compared to existing use.**” *Id.* (emphasis added).

20 Despite the fact that a marijuana retail sales license had been issued to allow for a
21 store to locate at the Project Site, City Code Enforcement Officer Deborah Farris explained
22 that additional permits would be required:

23 Hi Rob,

24 To address Councilman Myers’s concerns: A “Change of Occupancy” is
25 being required because of the previous *building certificate of occupancy* of
26 the building.

Because the building is located in Downtown on Cleveland St., the *land use*
allows for any type of retail. However, **the building use (or occupancy)**
requires a “Change of Occupancy” because it is currently a warehouse

1 shell. Improvements will need to be made so that the building can be used
2 for retail. At a minimum, they will need to install bathrooms, bring it up to
3 ADA standards, hook up to water and sewer, and create safe ingress and
4 egress. These are all International Building Code requirements. Bringing the
5 building up to code would be required regardless of the actual retail use; in
6 other words, it doesn't make any difference whether the business owners
7 wanted to sell women's fashions; open a massage parlor, a restaurant, or sell
8 marijuana.

9 The owner has also opted to do major renovations of the building under a
10 "Tenant Improvement". Here is the description:

11 "TI - Change of Occupancy - Origins - Construction includes TI to divide the
12 building into multiple retail suites, storage and offices, including the
13 construction of a new 2nd story (459 sq ft) mezzanine. Total area of
14 construction = 3268 sq ft. Interior only work. Exterior work is on a separate
15 permit."

16 See 2nd Laing Decl., **Ex. TT** (italics in original; bold and underlining added).

17 It bears repeating that "Bringing the building up to code would be required
18 regardless of the actual retail use; in other words, it doesn't make any difference whether
19 the business owners wanted to sell women's fashions; open a massage parlor, a restaurant, or
20 sell marijuana." See *id.* (emphasis added). In fact, this is precisely what City Planner Mr. Lee
21 told a friend of the Site's prior owner in August 2013, when Mr. Lee received an inquiry
22 about converting the building to a fruit stand:

23 Jason,

24 I have done some research regarding your question and have determined that
25 in order to use the building as you are showing, the building will need other
26 significant improvements to make it occupy-able for retail/commercial use,
including providing a restroom and doing seismic upgrades (according to the
building Department). You should contact the Building Department directly
about probable requirements.

.....

I am sure that your friends (the property owners) have heard this before with
other proposals/inquiries to improve the building. In any case, the fruit stand,
or any other retail use, will require significant upgrades to the building to

1 make it occupy-able for use (even with few or no architectural
2 modifications) – and thus would trigger the frontage improvements and
3 requirement to reduce the size of the building (in order to widen the
4 sidewalk). The major reason for this is because the building was
5 originally constructed for storage, and not for retail/commercial
6 occupancy, and thus the building was not originally improved to
7 retail/commercial occupancy standards.

8 Let me know if you have any other questions about this.

9 See 2nd Laing Decl., **Ex. UU** (emphasis added). In preparing his response, Mr. Lee made an
10 inquiry to City Plans Examiner Jozanne Moe, who explained “Carol did a building history
11 and there was nothing we could find. All we know is that it was a previous warehouse
12 building. So this would be a change of use and would be required to be brought up to
13 the 2012 IBC. Previous people have tried to move in there and I believe there were no City
14 Services to the building.” See *id.*, **Ex. VV**. (emphasis added). Ms. Moe further noted, “It
15 will probably be quite expensive.” See *id.*

16 By City code, “[a] Site Plan Entitlement is required for any . . . private proposal for
17 new construction or exterior modification to a building or site, including . . . commercial, . . .
18 expansion, or exterior remodeling of structures . . . where the proposed use is shown as
19 permitted in the applicable permitted use chart.” See 2nd Laing Decl., **Ex. HH**; RZC
20 21.76.070.Y.2. Site Plan Entitlement permits require public notice. See *id.*

21 The City requires “a Change of Occupancy permit to change the building code
22 occupancy from one occupancy classification to another occupancy classification such as
23 commercial to residential and residential to commercial.” See 2nd Laing Decl., **Ex. GG**.
24 “Examples of common **change of use** projects are; existing office buildings that are being
25 changed into a school/daycare, a house that is being changed into an office or retail building,
26 a warehouse building that is being changed into automotive repair or a storage building
into a church.” See *id.* (emphasis added). As part of the permit process, the City advises
applicants to “[r]esearch the Redmond Zoning Code (RZC) to determine what **occupancies**

1 are allowed in the building **and** what **land uses** are allowed in that zoning area.” *See id.*
2 (Emphasis added.) The City further advised: “Determine if you need a land use permit. **In**
3 **addition to the change of occupancy, if your proposal is changing the use from a land**
4 **use perspective, a land use permit may be required.**” *See id.* (Emphasis added.) The
5 City’s required forms ask, among other things, whether “Exterior Modifications to
6 Building?”, “Additional building square footage[?]” and “Change of Land Use? (RZG) *i.e.*,
7 warehouse to gym*” are being proposed. *See id.* The forms make clear distinctions between
8 different types of retail and other “Land Uses” such as “Warehousing/Storage.” *See id.*

9 As noted above, Applicant initially followed the required process by holding a pre-
10 application conference and having a land use permit file assigned to the Project. *See* 2nd
11 Laing Decl., **Exs. DD, EE & FF**. Inexplicably, Applicant abandoned its required land use
12 permit (Site Plan Entitlement) when it submitted its building permit and change of
13 occupancy permit applications on December 9, 2016 without a Site Plan Entitlement permit
14 application (or even reference to its land use permit file number LAND-2016-01420). *See*
15 *id.*, **Exs. DD, EE & II**. However, as stated on the permit forms (and the approved permits),
16 in Applicant’s own words the Project name is “Origins TI & **Change of Use.**” *See id.* **Ex. II**.
17 Applicant checked both the “Change of Occupancy” and “Change of Land Use” boxes in the
18 City’s required forms, as well as the “Additional building square footage proposed?” box.
19 *See id.*, **Exs. GG & II**.

20 A few weeks after the Appeal was filed, Applicant belatedly submitted a Site Plan
21 Entitlement application but withdrew it in the face of public scrutiny and issues raised by
22 City Planner Mr. Lee and the Design Review Board. *See* Laing Decl., **Ex. ZZ**. Mr. Lee’s
23 colloquy with the Design Review Board about the Origins Cannabis Project’s utterly flawed
24 permit process bears repeating:²

25 _____
26 ² Portions of this transcript are quoted at length in Section IV., Material Facts, in Appellant’s Motion for Partial Summary Judgment, including pinpoint citations. For brevity (too late), the citations are omitted here.

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17 MR. LEE: That's a good question. We
18 did have a preapplication meeting, but not with the
19 Design Review Board earlier in the year, and at that
20 point the revisions weren't as dramatic or
21 (unintelligible).

22 They jumped the gun. They submitted a
23 building permit application and the -- we issued a
24 part of the building permit and then there was an
25 appeal on that building for the application. So now
1 we've kind of gotten ourself all twisted up in time
2 and processing. So we jumped into just approval.

MR. LEE:

....

10 So as we mentioned earlier, we had an
11 appeal on a building permit and the building permit
12 appealed basically all the things that we're talking
13 about here, parking, marijuana use, and the appeal is
14 somewhat not ripe for appeal because the land use
15 permit should be building first and then consolidating
16 all the issue into one appeal hearing.

17 So the appeal hearing will probably be
18 extended. We do have a request for information
19 regarding traffic. So that the take up committee will
20 be asking for some more information regarding the
21 traffic impact analysis; therefore, probably will have
22 -- definitely have to reschedule the hearing to get
23 that material in and reviewed before a decision is
24 issued.

25 So people usually don't appeal
1 building permits. Just have that's what they appeal
2 here. They usually appeal land use permits, and
3 usually there's a land use permit that has the public
4 notice that goes out. So there was a mistake here in
5 that the building permit was issued for the tenant
6 improvement prior to this.

7 There should have been this site plan
8 entitlement application or administrative modification
9 application submitted before the building permit was
10 issued. So trying to get that all taken care of.

11 CHAIRMAN MEADE: So, I'm sorry. Just
12 to follow up on that a little bit. So was the city --

1 13 what is the city going to do or what is the city
2 14 currently doing with the building permit application?
3 15 MR. LEE: The building permit
4 16 application that was appealed for was a tenant
5 17 improvement for the interior only including this
6 18 mezzanine. There was a plan shown for the exterior
7 19 modifications, but we told them we cannot issue that
8 20 permit until this application is submitted.
9 21 So they gave -- so the building permit
10 22 that was issued was only for the inside, okay, . . .

11 9 CHAIRMAN MEADE: One more question.
12 10 On the tenant improvement plans, did that call for
13 11 plumbing and power, heating?
14 12 MR. LEE: So with this -- yes, yes.
15 13 And there will be some construction plan that will
16 14 require mutual hookups. As far as this, there will be
17 15 some more construction review to provide all necessary
18 16 water service, because that's -- the building permit
19 17 application is for a change in occupancy from a
20 18 warehouse to a commercial space that requires
21 19 plumbing.

22 . . .

23 17 MR. KRUEGER: Well, I'm not ready to
24 18 vote on this. I want this to go through the normal
25 19 procedures. . . .

26 18 *See id.*, **Ex. ZZ** (Bold text and underlining added.) Mr. Lee and the Design Review Board
27 19 also acknowledged issues with Applicant's estimate of the cost of the proposed
28 20 improvements vis-à-vis the value of the existing building on the Project Site. *See id.*

29 21 A few days later, Mr. Lee reached out to City Development Services Supervisor Ms.
30 22 Lewis with the following request: "Please see me when you are free -- before you leave
31 23 regarding building valuation for new storefronts of BLDG-2016-09802," noting that the
32 24 meeting's importance was "High." *See* 2nd Laing Decl., **Exs. RR**. The next day (April 12,
33 25 2017), Applicant withdrew its Site Plan Entitlement permit application and stated that it
34 26 "would not be refileing it," asserting now (without evidentiary support) that it "made a sound

1 business decision that the site entitlement permit had become too cumbersome”
2 Appellant’s Motion to Dismiss at 3:15-17.

3 On April 21, 2017, City Building Inspector Kenneth Mcleod left the following voice
4 message for Ms. Moe regarding the Project, following an inspection of the ongoing work:

5 Hey Jozanne this is Kenny it’s Friday the 21st at about 12:40.

6 In the afternoon beautiful day -- I have some questions for you regarding I, I
7 believe it’s kind of a touchy -- sketchy -- weird permit for Origins
8 Cannabis it’s that CMU block building that’s right down -- kitty corner to
9 with Amanda door kinda next door to the -- steakhouses that trying steak
10 house anyway and there’s some things going on there that I’d kinda like to
11 know I need to be brought up to speed on some of the (sic) application
12 things have been deleted and added and that kind of stuff so if you get an
13 opportunity before 2:30 give me a call on my cell phone (425) 223-9022 it’s
14 after two thirtieth let’s just touch base next week see you.

15 See 2nd Laing Decl., Exs. OO, PP & QQ.

16 On April 28, 2017, Applicant emailed the City a significantly revised floor plan of
17 the approved interior improvements to add a third retail space, remove the “use” of the
18 mezzanine (but not the mezzanine itself) and reconfigure the entry way to a shared lobby for
19 the three retail spaces instead of individual exterior entrances for the two original retail
20 spaces. Compare 2nd Laing Decl., Ex. SS with Woolsey Decl., Ex. A. Applicant appears to
21 have submitted this revised floor plan to allow it to complete and open the marijuana retail
22 sales business in June 2017, despite lacking required permits to modify the building’s
23 exterior, any parking, any loading space and any space for garbage / recycling in a building
24 located about 800 feet from a playground under construction.³

25 ³ These facts are established in Section IV., Material Facts, in Appellant’s Motion for Partial Summary
26 Judgment, including pinpoint citations. The citations are omitted here.

1 appeal and completion of the required permit process.

2 **VII. CONCLUSION**

3 There is a well-established legal principle that one cannot accomplish indirectly what
4 one cannot accomplish directly. *See, e.g., Smith v. Orthopedics Intern., Ltd., P.S.*, 170 Wn.2d
5 659, 244 P.3d 939 (2010). This rule is particularly apt here. The City and Applicant have
6 proceeded with an unlawful, piecemeal permit process that seems designed to evade public
7 notice or participation in order to allow a marijuana retail sales use in an unsuitable location.
8 Having withdrawn its required Site Plan Entitlement permit application, Applicant Origins
9 Cannabis has ensured that no use—retail, office or otherwise—can actually be approved on
10 the Project Site. It's not even clear that this appeal is ripe or can proceed without the Site
11 Plan Entitlement decision, given that the prerequisite land use permit has not issued and has
12 been withdrawn. *See* RZC 21.76.095.E.6.; *see also* RCW 36.70B.060(3), RCW 36.70B.110
13 and RCW 36.70B.120(2). Mr. Lee remarked as much during the Design Review Board
14 hearing. Whatever the case, Appellant respectfully requests that the Hearing Examiner grant
15 this motion reverse the Decision, issue a “stop work order” for all approved work on the
16 Project Site and require Applicant to obtain the necessary Site Plan Entitlement permit prior
17 to the City (re-)issuing the building permit and change of use permit subject to this appeal.

18
19 Dated this 1st day of May, 2017.

20 SCHWABE, WILLIAMSON & WYATT, P.C.

21
22 By: 

23 Aaron M. Laing, WSBA #34453
24 alaing@schwabe.com
25 Attorneys for Appellant WPDC
26 Cleveland, LLC

1 requirements to allow for *any* retail use, much less retail marijuana use. *See Bowman*, 104
2 Wn.2d at 183; *Donatelli*, 179 Wn.2d at 90; CR 56(c). This red-herring argument must fail,
3 and Applicant's motion must be denied. *See id.*

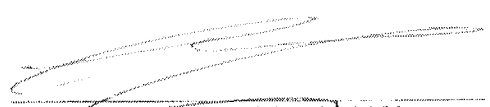
4 **VII. CONCLUSION**

5 Applicant does not dispute in its motion that it must bring the old warehouse building
6 up to code for any change of use and that a marijuana retail sales business in Redmond
7 requires a code-compliant building located outside of required buffers. Applicant instead
8 seeks to skirt the City's required permit process by piecemealing its applications in order to
9 avoid both public scrutiny and complying with substantive requirements. Applicant's
10 baseless assertions about what constitutes a "change of use" or "change of occupancy" are
11 contrary to its own statements and admissions in its various permit applications as well as
12 the representations it made to the City throughout the process. Applicant cannot avoid the
13 prerequisite permit process to obtain a land use permit by strategically abandoning such
14 permit. Nor can Applicant insulate its building permit and change of occupancy permit from
15 review by asserting that a business license is needed to trigger a use change. Applicant has
16 not and cannot provide a code-compliant building on the Site for any retail use, much less a
17 marijuana retail sales business. Appellant has cross-moved on these same issues and
18 respectfully requests that the Hearing Examiner grant Appellant's motion, issue a stop work
19 order and deny Applicant's motion in its entirety.

20 Dated this 8th day of May, 2017.

21 SCHWABE, WILLIAMSON & WYATT, P.C.

22
23 By:


24 Aaron M. Laing, WSBA #B4453
25 alaing@schwabe.com
26 *Attorneys for Appellant WPDC*
Cleveland, LLC

Attachment 6

King County Department of Assessments

Fair, Equitable, and Understandable Property Valuations

Assessor

Department of Assessments

500 Fourth Avenue, Suite ADM-AS-0708, Seattle, WA 98104

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PARCEL

Parcel Number: 710680-0065
Name: ANDORRA VENTURES LLC
Site Address: 16390 CLEVELAND ST 98052
Legal: REDMOND TOWN OF S 60 FT TOW POR LOTS 1 & 2 BLOCK 6 S D ADD PER KC COURT CASE# 09-2-03562-3 SEA REC# 20100609000937

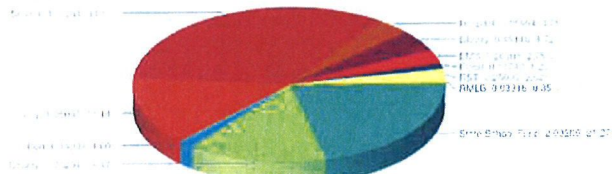
BUILDING 1

Year Built: 1956
Building Net Square Footage: 2760
Construction Class: MASONRY
Building Quality: LOW COST
Lot Size: 3140
Present Use: Warehouse
Views: No
Waterfront:



TOTAL LEVY RATE DISTRIBUTION

Tax Year: 2017 Levy Code: 2020 Total Levy Rate: \$9.55466 Total Senior Rate: \$6.15735



41.01% Voter Approved

[Click here to see levy distribution comparison by year.](#)

TAX ROLL HISTORY

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2016	2017	320,700	23,500	353,200	320,700	23,500	353,200
2015	2016	292,900	23,500	316,400	292,900	23,500	316,400
2014	2015	273,400	23,000	296,400	273,400	23,000	296,400
2013	2014	237,100	22,300	259,400	237,100	22,300	259,400
2012	2013	237,100	21,800	258,900	237,100	21,800	258,900
2011	2012	265,000	21,600	286,600	265,000	21,600	286,600
2010	2011	265,000	19,700	284,700	265,000	19,700	284,700
2009	2010	265,000	20,500	285,500	265,000	20,500	285,500
2008	2009	259,400	19,400	278,800	259,400	19,400	278,800
2007	2008	209,200	18,500	227,700	209,200	18,500	227,700
2006	2007	170,000	16,600	186,600	170,000	16,600	186,600
2005	2006	140,000	1,000	141,000	140,000	1,000	141,000
2004	2005	125,500	1,000	126,500	125,500	1,000	126,500
2003	2004	125,500	1,000	126,500	125,500	1,000	126,500
2002	2003	117,100	1,000	118,100	117,100	1,000	118,100
2001	2002	100,400	1,000	101,400	100,400	1,000	101,400
2000	2001	44,600	20,200	70,800	44,600	20,200	70,800

Reference Links:

[King County Taxing Districts Codes and Levies \(PDF\)](#)

[King County Tax Links](#)

[Property Tax Advisor](#)

[Washington State Department of Revenue \(External link\)](#)

[Washington State Board of Tax Appeals \(External link\)](#)

[Board of Appeals/Equalization](#)

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[Recorder's Office](#)

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1999	2000	44,600	17,000	61,600	44,600	17,000	61,600
1998	1999	44,600	16,600	61,200	44,600	16,800	61,200
1997	1998	0	0	0	36,000	16,000	57,000
1996	1997	0	0	0	35,000	16,000	57,000
1994	1995	0	0	0	36,000	16,000	57,000
1992	1993	0	0	0	33,500	32,300	65,800
1990	1991	0	0	0	33,500	32,300	65,800
1988	1989	0	0	0	33,500	32,300	65,800
1986	1987	0	0	0	30,100	35,700	65,800
1984	1985	0	0	0	27,800	33,100	61,000
1982	1983	0	0	0	16,900	29,500	46,400

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Attachment 7

A-Z Directory Language Text size **A A+**

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Marijuana Stores - Zoning Regulations

Amendments to Regulations for Retail Marijuana

The Redmond City Council adopted [Ordinance 2836](#) at its June 7, 2016, meeting. This ordinance changes regulations for retail marijuana store in Redmond as follows:

- Allow retail marijuana stores in the retail and mixed use residential/office Downtown zones (Old Town, Anderson Park, Town Center, Bear Creek, Valley View, Trestle, Sammamish Trail, Town Square, and River Bend zones); Overlake Village zones; General Commercial zone, and Regional Retail zone.
- Set associated development standards such as height, floor area, and parking standards similar to other retail uses. These requirements vary by zone.
- Reduce discretionary buffers from sensitive uses as defined by the state to 100 feet.
- Buffers from schools and playground would remain at 1,000 feet as mandated by state law.
- No separation between stores is required
- No local limit on the number of stores; the state license limit is 4.

A copy of the final ordinance is available on the [2016 City Ordinances](#) page. The ordinance took effect on June 18, 2016.

Maps

The City has prepared several maps to highlight important information regarding zoning for retail marijuana stores.

The following map shows potential parcels for retail marijuana uses based on the City Council's direction. The map is color-coded to show different zones. **This map is subject to change; while the City Council adopted an ordinance which took effect on June 18, 2016, the map has not yet been updated.**

[Acceptable Parcels Map](#) (updated 5/20/2016)

The following map shows the various sensitive uses requiring a buffer in Redmond, as well as the buffer around those uses. Red buffers are the 1,000 foot buffers around schools and playgrounds, while blue buffers are the 100 foot buffers around other sensitive uses. **This map is subject to ongoing change as uses such as daycares come and go, or as the status of other uses changes (e.g. a park becoming a playground).**

[Marijuana - Buffers from Sensitive Uses](#)

Background

Initiative 502 was approved by the voters at the November 6, 2012, general election. I-502 legalized the possession of up to one ounce of marijuana by adults over 21 years of age and provided for a legal recreational marijuana market including producers (growers), processors, and retailers. I-502 placed the responsibility and authority for regulating this new market in the state Liquor Control Board (LCB). The Liquor Control Board adopted rules governing retail marijuana in late 2013.

The City of Redmond originally adopted zoning regulations for retail marijuana in early 2014. Retail marijuana stores are allowed in areas zoned for retail uses in Redmond. However, the 1,000-foot buffers around schools, parks, daycares, and transit centers effectively prohibit retail marijuana stores in Redmond.

Recent changes in state law allow cities to reduce the required minimum distance between retail marijuana stores and daycares, recreation centers, libraries, parks, transit centers, and game arcades down to a minimum of 100 feet. Distances between retail marijuana stores and schools

and playgrounds must remain 1,000 feet.

Furthermore, the state Liquor and Cannabis Board has increased the limit on the number of retail store licenses per community that it issues. Previously, Redmond was limited to two retail store licenses. The new limit for Redmond will be four retail store licenses.

After a public review process, the Redmond City Council adopted ordinance 2836 on June 7, 2016, which amended Redmond's regulations for retail marijuana stores.



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Get Involved:
City Council
Donations
Events
Volunteering

Other City Sites:
Budget.Redmond.gov (Budget Data)
Data.Redmond.gov (Open Data Index)
Land.Redmond.gov (E-Track Portal)
RedmondDerbyDays.com
RedmondLights.com

Request:
eAlert Subscriptions
Inspections
Junk Mail Reduction (KC site)
Police Public Records
Rental Facilities
Utility Services

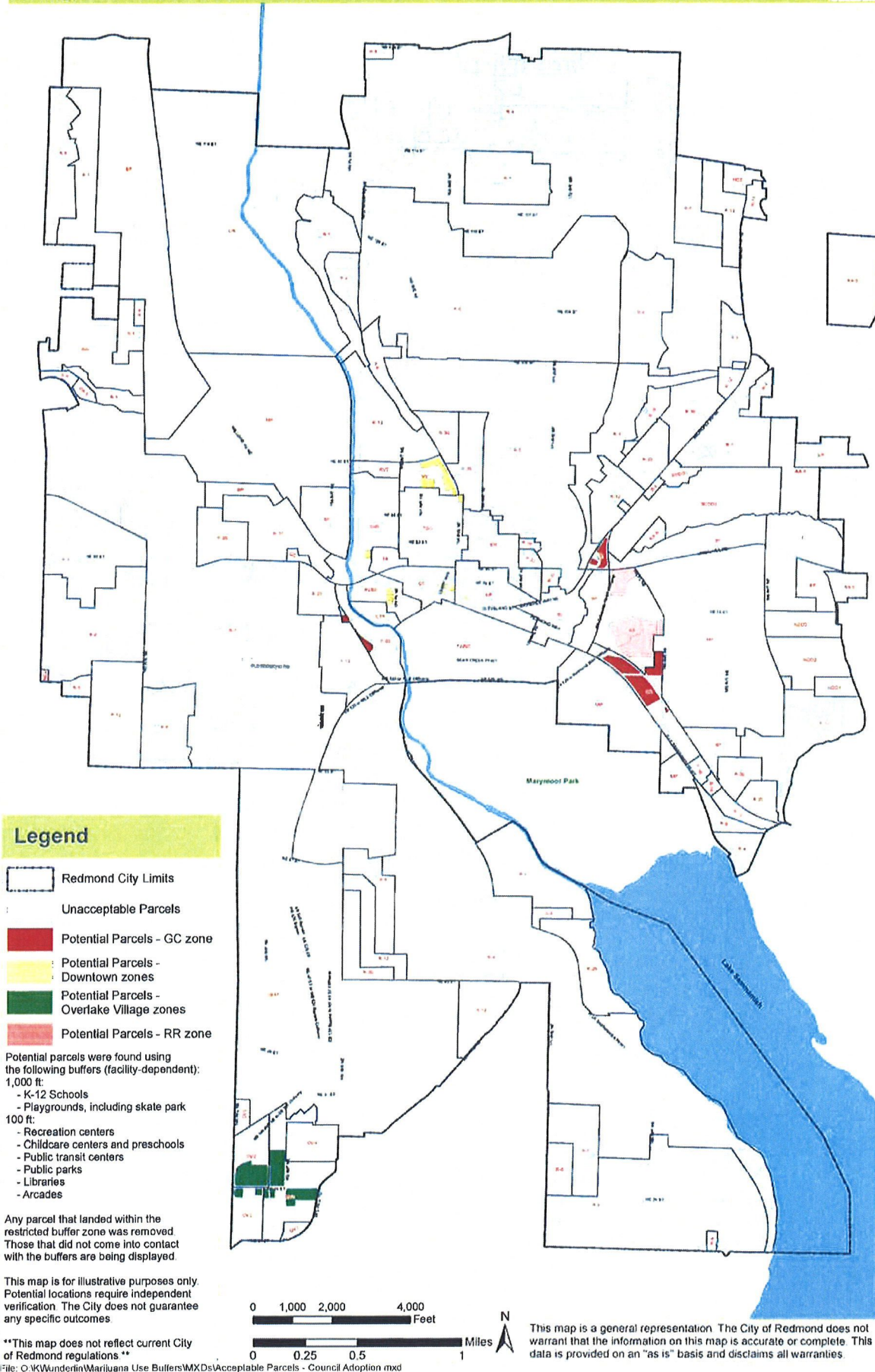
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425-556-2900 | 15670 NE 85th Street | PO Box 97010 | Redmond, WA 98073-9710
Contact Us | Info@Redmond.gov

Potential Retail Marijuana Store Sites

Using state sensitive-uses list.

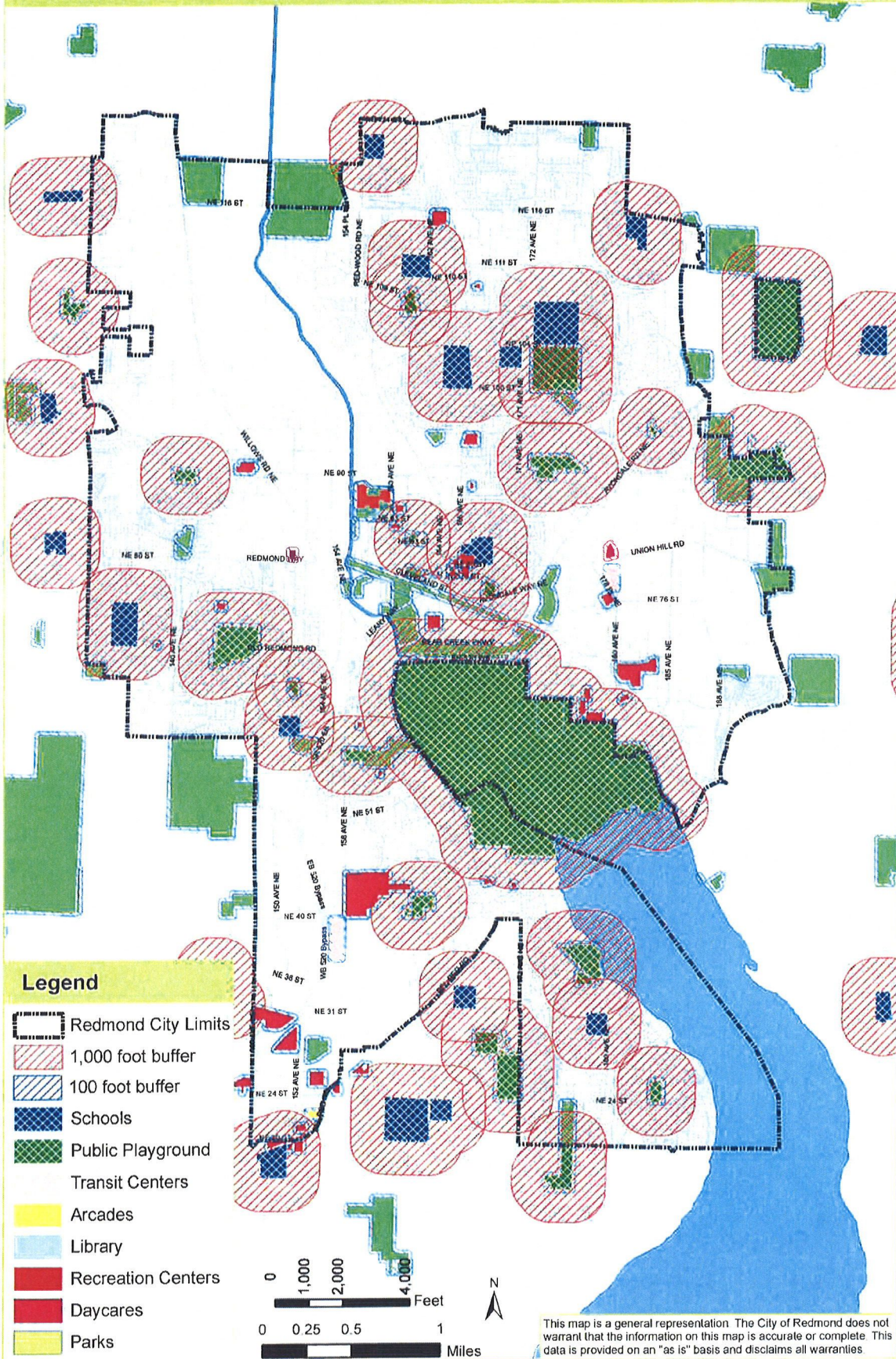


This map does not reflect current City of Redmond regulations

File: O:\Wunderlin\Marijuana Use Buffers\MXDs\Acceptable Parcels - Council Adoption.mxd

Uses in Redmond Requiring a Buffer from Marijuana Stores

For Illustrative Purposes Only



Attachment 8

Laing, Aaron M.

From: Anika Van Ry
Sent: Monday, April 10, 2017 2:10 PM
To: Deborah Farris; AnnMarie Fein
Cc: Susan Cooper
Subject: FW: Washington State Liquor and Cannabis Board - Official Local Authority Notice
Attachments: 6032719560010005_LA_AGW-04-10-2017-13.13.056.pdf

Deb and AnnMarie,

Please review the attached marijuana license application for A Green Life, and email me with your approval or concerns.

Thank you.

Anika Van Ry

Administrative Specialist, Mayor's Office | City of Redmond
☎: 425.556.2112 | ✉: avanry@redmond.gov | Redmond.gov
MS: 4NEX | 15670 NE 85th St | Redmond, WA 98052

NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this e-mail account is a public record. Accordingly, this e-mail, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

From: noreply@lcb.wa.gov [mailto:noreply@lcb.wa.gov]
Sent: Monday, April 10, 2017 1:49 PM
To: allen.wambold@lcb.wa.gov; Mayor (Internet) <Mayor@redmond.gov>
Subject: Washington State Liquor and Cannabis Board - Official Local Authority Notice

The Liquor and Cannabis Board is notifying you of a new marijuana or liquor application within your jurisdiction. Please review the attachment and send your responses to localauthority@sp.lcb.wa.gov.

Click [here](#) to report this email as spam.



NOTICE OF MARIJUANA LICENSE APPLICATION

WASHINGTON STATE LIQUOR AND CANNABIS BOARD

License Division - 3000 Pacific, P.O. Box 43075

Olympia, WA 98504-3075

Customer Service: (360) 664-1600

Fax: (360) 753-2710

Website: <http://lcb.wa.gov>

RETURN TO: localauthority@sp.lcb.wa.gov

TO: MAYOR OF REDMOND

DATE: 4/10/17

RE: CHANGE OF LOCATION APPLICATION

from A GREEN LIFE

15219 NE 90TH ST UNIT B

3

REDMOND, WA 98052-3561

APPLICANTS:

ALTERNATIVE MEDICINE COLLECTIVE LLC

License: 413361 - 3K County: 17

UBI: 603-271-956-001-0005

Tradename: A GREEN LIFE

New Loc: 16390 CLEVELAND ST

REDMOND, WA 98052-4314

SHERMAN, JONATHAN M

1988-01-05

SHERMAN, CHELSEA ROSE

(Spouse) 1988-12-14

WHITE, REGINALD T

1960-02-12

Mail: 17525 NE 40TH ST UNIT E32

REDMOND, WA 98052-5699

Phone No.: 206-915-9212 JON SHERMAN

Privileges Applied For:

MARIJUANA RETAILER

MEDICAL MARIJUANA

As required by RCW 69.50.331(7) the Liquor and Cannabis Board is notifying you that the above has applied for a marijuana license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our Marijuana CHRI desk at (360) 664-1704.

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Do you approve of applicant? | ☐ | ☐ |
| 2. Do you approve of location? | ☐ | ☐ |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
(See WAC 314-55-160 for information about this process) | ☐ | ☐ |
| 4. If you disapprove, per RCW 69.50.331(7)(c) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based. | | |

DATE

SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE