

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

In the Matter of the Appeal of	)	NO. LAND2013-01289
	)	
	)	
<b>John Baumann</b>	)	
	)	Tent City Appeal
	)	
	)	
of the June 27, 2013 City of Redmond	)	
Code Administrator's Decision	)	
Approving a Temporary Use Permit	)	<b>FINDINGS, CONCLUSIONS,</b>
Authorizing a Temporary Encampment	)	<b>AND DECISION</b>
at Redwood Family Church	)	
<u>(No. LAND-2013-00929)</u>	)	

**SUMMARY OF DECISION**

The Appellant did not demonstrate that the City Administrator's June 27, 2013 decision approving a temporary use permit authorizing a temporary encampment at Redwood Family Church was unsupported by a preponderance of the evidence or was clearly erroneous. The appeal must be **DENIED**.

**SUMMARY OF RECORD**

**Request:**

On June 27, 2013, the City of Redmond Code Administrator approved the application of SHARE/WHEEL for a temporary use permit authorizing a temporary encampment at the Redwood Family Church. On July 11, 2013, John Baumann (Appellant) timely appealed.

**Issues on Appeal:**

1. [The approval] has a negative impact on the adjacent properties that belong to me and my family.
2. The plans and drawings are incomplete and do not show the true size and location of the tent city. They are actually very deceptive.
3. If the plans were to scale and complete, it would be clear to the City that the tent city should not be allowed. It would also have allowed the neighbors to see the true impact.

**Pre-Hearing Procedural Summary:**

The above-captioned matter was scheduled to be heard on Wednesday August 7, 2013. On July 17, 2013, the City of Redmond Hearing Examiner disclosed via email to the Appellant, the City, and the Applicant a previous working relationship with counsel for the Applicant and offered an

opportunity for objection based on the appearance of fairness doctrine. There was no objection raised. No request for pre-hearing conference was submitted. In order to facilitate efficient proceedings, the Examiner issued a prehearing order dated July 24, 2013, establishing a pre-hearing witness and exhibit list exchange schedule. (Pre-Hearing Order 1.)

On July 26, 2013, counsel for the Applicant submitted a motion to clarify, asking the Appellant be directed to clarify appeal issue #1 by identifying specific alleged negative impacts to his adjacent properties. In order to facilitate efficient proceedings, the Examiner issued a second pre-hearing order establishing a schedule for pre-hearing clarification by the Applicant and a modified witness and exhibit list exchange. Pre-Hearing Order 2 required the Appellant to clarify appeal issue #1 and to identify witnesses and exhibits no later than July 31, 2013.

The Appellant did not meet the July 31st deadline. On the Examiner's request, the Hearing Examiner Clerk from the City Clerk's office contacted the Appellant to inquire about his lack of response. Upon contact, the Appellant indicated he had been out of town and unaware of the clarification deadline and that he still intended to proceed with his appeal. On Friday August 2, 2013 the Examiner sent an email seeking feedback from counsel for the City and the Applicant about potential reorganization of the pre-hearing disclosure deadlines in the short time remaining prior to the hearing. Counsel for the City responded within hours. In the interest of retaining the scheduled hearing date and in light of the extremely short timeframe, before close of business on August 2, 2013 the Examiner issued Pre-Hearing Order 3 modifying the pre-hearing exchange timeline without waiting for input from counsel for the Applicant. Pre-Hearing Order 3 required the Appellant to clarify issue #1 and identify witnesses and exhibits by 3:00 pm Monday August 5th in order to allow the parties some opportunity to identify and bring witnesses and exhibits to the scheduled hearing. The Third Pre-Hearing Order stipulated that if any evidence brought by the Appellant resulted in undue surprise, the record would be held open to allow the Applicant and City to respond in writing or at a reconvened hearing.

On the evening of Friday August 2, 2013, counsel for the Applicant objected to Pre-Hearing Order 3, moving to have the Order rescinded and appeal issue #1 dismissed. Counsel argued that because the Appellant had failed to comply with the deadline in Pre-Hearing Order 2, he had forfeited his right to appeal. The Examiner notified parties via email through the Hearing Examiner Clerk that the Pre-Hearing Order 3 would not be rescinded.

On Monday August 5, 2013, the Appellant submitted the information required by Pre-Hearing Order 3.

On Tuesday August 6, 2013, the Applicant submitted notice of substitution of counsel.

**Hearing Date:**

The City of Redmond Hearing Examiner convened the open record appeal hearing on August 7, 2013.

At the opening of the proceedings, new counsel for the Applicant renewed the motion to have Pre-Hearing Order 3 rescinded and appeal#1 dismissed both for failure to meet the deadlines

established in the pre-hearing orders and for the appeal document's failure to identify specific alleged negative impacts. The Examiner denied the motion on the following grounds:  
1) appeals of Type I decisions are heard at open record appeal hearings to which an Appellant may bring new evidence until the close of the record; 2) orders requiring pre-hearing exchange are not based City Code provisions but are rather intended as a courtesy for the sake of expediting efficient proceedings; and 3) because in setting the matter for hearing the City of Redmond had accepted the filed appeal - without clarification - as satisfying the requirements of Redmond Zoning Code (RZC) 21.76.060.I.2.b.

During the proceedings, the parties agreed to hold the record open for submission of additional evidence as follows: 1) until August 14, 2013 for submission of a legal brief by the Applicant in response to the City's hearing brief; 2) until August 22, 2013 for the Applicant to submit additional evidence in response to the exhibits offered by the Appellant and admitted as Exhibits A1 through A5; and until Friday August 30, 2013 for the Appellant to submit written comments responding to post-hearing submittals from the Applicant and to the City's evidence that a conditional use permit was issued for the Redwood Church in 1977. The record closed on August 30, 2013 and the deadline for decision issuance fell ten business days later on September 16, 2013.

**Testimony:**

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

*For the Appellant:*

John Baumann, Appellant  
Sharmin Dominke

*For the City:*

Steven Fischer, Planner, Redmond Planning and Community Development Department  
Officer David Sowers, Neighborhood Resource Officer, Redmond Police Department

*For the Applicant:*

Robert Bowen, Tent City 4 Resident  
Pastor Todd Puckett, Redwood Church  
Scott Morrow, SHARE/WHEEL, Applicant representative

*Attorney Representation:*

Angela Belbeck, Redmond City Attorney's Office, represented the City.  
Gavin West, Attorney, appeared on behalf of the Applicant.

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**Exhibits:**

At hearing, the following exhibits were offered in evidence:

*Submitted by the Appellant:<sup>1, 2</sup>*

- A1 Appellant's written appeal narrative (including clarification of appeal issue #1), dated received August 5, 2013
- A2 City of Bothell Interoffice Memorandum of the Police Department, dated September 30, 2004
- A3 Kirkland Reporter article, printed from the online newspaper, date not provided
- A4 Seattle Times article printed from the online newspaper, date not provided
- A5 Figure entitled "Tent City- Related Incidents", prepared by the Mercer Island Police Department June 16, 2008
- A6 Chablis Planned Residential Development/Preliminary Plat, including Ordinance 2599 (effective May 28, 2011) and pages 3, 13, and 21 of the April 20, 2011 Findings, Conclusions, and Decision in Chablis PRD/Plat (L090096/L090097)

*Submitted by the City:*

- C1 Technical Committee Report to the Examiner, dated July 24, 2013, with the following attachments:
  - 1. Application
  - 2. Vicinity Map
  - 3. Notice of Application and Public Meeting
  - 4. Public Meeting
  - 5. Public Comment
  - 6. Notice of Decision
  - 7. Notice of Appeal Hearing
  - 8. Appeal
  - 9. PowerPoint Presentation from City's June 24, 2013 Public Meeting on the temporary use application
- C2 City of Redmond's Pre-Hearing Memorandum of Law, dated August 7, 2013
- C3 Planning Staff's Power Point presentation on the open record appeal
- C4 Graphic entitled "Redmond Police Calls Coded to Tent City Collected by Steven Fischer", dated August 7, 2013
- C5 Aerial photograph of the subject property from Redmond's online GIS, with setback of property from adjacent residence (created by Steven Fischer)

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<sup>1</sup> Consistent with Pre-Hearing Order 3, on Monday August 5, 2013, the Appellant submitted a 27-page packet comprised of: a written narrative by Appellant, various print outs from websites and/or blogs discussing tent city in other locations, several newspaper articles printed from online versions of the papers, a document purporting to be from the Bothell Police Department, a graphic purporting to be from the Mercer Island Police Department, and a cut and pasted document on letterhead from the National Coalition for the Homeless. At the outset of proceedings, counsel for the Applicant objected to the entire 27-page packet, arguing it was submitted late, contained hearsay, lacked foundation, and was unduly prejudicial. The parties reviewed each page individually on the record. The Examiner excluded items that were of unidentifiable origin or that contained unverifiable, unduly prejudicial information and documents that lacked sufficient credibility. The admitted documents were identified as A1 through A5.

<sup>2</sup> The Appellant did not submit any documents as provided in the post-hearing order.

- C6 Excerpt from Redmond Zoning Code RZC 21.08.060, R-4 Zone, with notations by Steven Fischer
- C7 Application for conditional use permit, dated March 14, 1977
- C8 City of Redmond Resolution No. 428 approving Church of the Nazarene at the subject property, dated May 12, 1977

*Submitted by the Applicant:*<sup>3</sup>

- S1 Motion *in limine* to exclude evidence, dated August 6, 2013
- S2 Objection to Third Pre-Hearing Order, submitted via email August 2, 2013

Also included in the record of this matter are the following:

- Order Scheduling Pre-hearing Submittal Timeline (Pre-Hearing Order 1), July 24, 2013
- Order on Request for Clarification (Pre-Hearing Order 2), July 29, 2013
- Third Pre-Hearing Order, August 2, 2013
- Post-Hearing Order Scheduling Submittal Timeline, August 8, 2013

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

## FINDINGS

### *Background and Procedural History*

1. On May 28, 2013, SHARE/WHEEL (Applicant) submitted a temporary use permit application. It was signed by the Redwood Family Church as co-applicant and property owner. The request was to allow a homeless encampment (Tent City 4) to be established at the church, which is located at 11500 Redmond - Woodinville Road. The proposal was to allow up to 100 homeless individuals to reside on-site for approximately 94 days. The encampment was to be managed and logistically supported by SHARE/WHEEL. Proposed improvements included a kitchen, a common area with a library and TV, showers, dumpsters, portable toilets, donation management areas, and sleeping quarters separated by gender and/or for partnered pairs. Redwood Church was to provide land, access to water and a grey water drain, and access to electrical to power miscellaneous appliances and minimal interior lighting. The encampment was proposed to be enclosed by fence and to allow access through a single gate. Where existing natural vegetation would not visually screen the temporary use from adjacent parcels, the application called for a six-foot tall sight obscuring fence. *Exhibit C1.1, Application.*
2. The application indicated the encampment was to be operated consistent with the Tent City 4 Code of Conduct, to be enforced 24/7 by teams of security personnel. No persons under 18 years of age were to be admitted and only service animals allowed. Persons seeking admission after the camp reached maximum capacity were to be required to leave. Homeless residing or seeking residence in the encampment would be provided with bus tickets to leave the vicinity. Persons with outstanding arrest warrants and with

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<sup>3</sup> The Applicant did not submit any responsive documents as provided in the post-hearing order.

certain classes of convictions were to be turned away when seeking admission and the Redmond Police Department was to be notified of any turned away who appeared not to leave the area peacefully. *Exhibit C1.1, Application.*

3. Attached to the application form, narrative, and Tent City 4 Code of Conduct were two maps. The first was a vicinity map showing the Redwood Family Church property in the context of surrounding parcels and roads. The vicinity map contained an oval depicting the general location of the proposed encampment in relation to the church. A second graphic depicted the proposed site layout including perimeter fencing and the locations of various kinds of tents and facilities with relation to the church building. *Exhibit C1.1, Application.*
4. On June 3, 2013, the City of Redmond issued notice of the application. The notice informed recipients of the opportunity to submit written comment on the application through 5:00 pm on June 25, 2013. Notice also included the announcement of a public meeting scheduled for June 24, 2013. The same vicinity map and site plan attached to the application were attached to the notice of application. The notice was mailed to surrounding property owners and posted on-site on a Major Land Use Sign consistent with the requirements established in the Redmond Zoning Code (RZC). *Exhibit C1, page 3; Exhibit C1, Attachment 3; RZC 21.46.030D.1; RZC 21.46.030D.2; RZC 21.76.080B.*
5. On June 24, 2013, the neighborhood meeting was held at the Church of the Holy Cross. Approximately 30 people attended the meeting and asked questions including the following: how the permit process works; how SHARE/WHEEL is operated; what are the rules of the encampment; frequency of Tent City coming to Redmond; concern about noise from the encampment; crime and personal safety in neighborhoods with Tent City; and impacts to property value to surrounding properties due to Tent City. *Exhibit C1, page 3; Exhibit C1, Attachment 4, Public Meeting; Exhibit C1, Attachment 9, PowerPoint presented at Public Meeting.*
6. During the 21-day notice of application comment period, the City received 27 emailed comments from 18 individuals. Three of the emails were in favor of the application. The remainder of the emails expressed concerns including: noise, lack of public transportation, potential increased crime, loss of property value, whether the use is appropriate in a residential neighborhood, and the frequency of Tent City being hosted in Redmond. *Exhibit C1, page 3; Exhibit C1, Attachment 5, Public Comment.*
7. On June 27, 2013, the City's Code Administrator issued notice of the decision approving the short term temporary use permit consistent with RZC 21.76.080G. Copies of the decision were mailed out to the Applicant and all parties of record. *Exhibit C1, page 4; Exhibit C1, Attachment 6, Notice of Decision.*
8. Approval was granted for no more than 110 days to begin on July 13, 2013 and end not later than October 30, 2013. Conditions of approval required the following: set up of the encampment consistent with the approved site plan; screening with fencing; prohibition against using the existing parking lot for tents, portable toilets, or non-motorized

equipment; compliance with Seattle-King County Health Department standards and requirements; restriction against child residents; obtaining and abiding by all required City permits and a temporary electric permit if deemed necessary after review; maintenance of a resident log to be made available for inspection; outstanding warrant and sex offender checks on all seeking entrance; quiet time between 9:00 pm and 6:00 am; and that the host site must be left free of debris, litter, and evidence of the temporary use upon completion and removal of the encampment. *Exhibit C1, Attachment 6, Notice of Decision.*

9. On July 11, 2013, John Baumann (Appellant) timely appealed the approved temporary use permit. *Exhibit C1, Attachment 8; Exhibit C1, Attachment 7.*

*Arguments Raised on Appeal*

10. The Appellant owns real property at 11414 Red-Wood Road just east of the Redwood Family Church site. In his timely filed appeal, he identified the following issues:

1. [The approval] has a negative impact on the adjacent properties that belong to me and my family.
2. The plans and drawings are incomplete and do not show the true size and location of the tent city. They are actually very deceptive.
3. If the plans were to scale and complete, it would be clear to the City that the tent city should not be allowed. It would also have allowed the neighbors to see the true impact.

*Exhibit C1, Attachment 8.*

11. At hearing, the Appellant submitted the position that the vicinity map and site plan distributed with the notice of application are inaccurate and not a clear representation of location or what is involved. On the date the encampment moved in, there was no one from SHARE/WHEEL there and the encampment was set up on his adjacent private property. *Baumann Testimony; Exhibit A1.*
12. The Redwood Family Church is situated at the intersection of Red-Wood Road and NE 116th Street. The Appellant further argued that the underlying R-4 zoning designation requires safe walking conditions and that there is not safe walking on NE 116th Street and on Red-Wood Road between the site of the encampment and the nearest transit stops. In support of his assertion, the Appellant referenced language from the Chablis Planned Residential Development and Preliminary Plat (L090096/L090097), in which he himself was the applicant and which was approved by the City Council in Ordinance 2599, effective May 28, 2011. Language on page 21 of the PRD/Plat decision stated:

Current conditions on NE 116<sup>th</sup> Street do not provide safe walking conditions for students or other pedestrians. An interim walkway shall be constructed of concrete curb, gutter and a five-foot sidewalk if adjacent to the street.

The Appellant asserted that based on this language, the City has reason to know the walking conditions on NE 116th Street and on Red-Wood Road are unsafe for pedestrians and drivers if residents of the encampment walk along the street to transit stops, and that therefore the City should not have approved the temporary use. The Appellant testified that on the date of the instant hearing, he had to swerve around people walking on the street from the encampment. *Baumann Testimony; Exhibit A1; Exhibit A6.*

13. At hearing, the Appellant argued that a conditional use permit should have been required for the temporary use because it is an expansion of an existing church. The Appellant stated:

Almost all cities require a conditional use permit for a church in a residential neighborhood. ... That is because they are not a normal use and they bring a large amount of people into a low density neighborhood and create a negative impact. Redmond has chosen to allow a church without a conditional use permit, but to limit that to a building that has less than 250 seats (or enough sq. ft. to allow for that amount of seats) to minimize the impact. When you add 100 people in tent city to the allowed seats in the existing institution, it is well over the 250 threshold. They have added additional a use to the building that pushes it well over the 250 seat exemption. These people are not there for a few hours each week. ...[M]any of them are there all day... . This clearly has a much greater impact than one church member. When you allowed the occupancy of this site to be pushed over the 250 level and modified the use of the site, it should have triggered the need of a conditional use permit.

*Exhibit A1; Baumann Testimony.*

14. The Appellant was concerned over the potential for an increase in crime rates in the neighborhood. In his testimony and written statement, the Appellant asserted that:

[I]ndependent studies and crime statistics in other cities show that crime does rise in locations close to homeless shelters... [including] car break ins, ordinance violations, larcenies, [and] ...violent crime... . Common sense tells you that if you put 100 people that have a high rate of issues into a dense encampment with conditions worse than a third world refugee camp there will be problems. ... It may be true that the overall crime rate for the city goes down because the cities increase police patrol, but in the local cities that specifically track crime related to tent city, it shows an increase [in crime] as well as a huge cost. ...[T]he crime rate will stay the same in the city, but goes up in the immediate neighborhood.

Mr. Baumann testified that the fact that the police increase patrols indicates they recognize the increased danger inherent in a homeless encampment. *Baumann Testimony; Exhibit A1.*

15. In support of his contentions regarding crime specifically, the Appellant offered a 2004 memorandum from City of Bothell Police Department relating to the encampment of Tent City 4 at St. Brendan's in Bothell from May through July 2004.<sup>4</sup> During review of the permit application, a policy decision was made to provide police presence at the site 24/7. The memorandum reports the following statistics:

- 154 police contacts during that encampment:
- 25 criminal events or related contact
- 129 non-criminal events/related contact
- 11 arrests: five felony warrants, two misdemeanor warrants, 2 domestic violence assaults, one DUI, and one drug related arrest
- 6 individual with arrest (non-extraditable) warrants not arrested
- 2 known sex offenders: one admitted and one denied entry
- 10 known individuals denied entry with police notification
- 53 individuals ejected after admission with police notification
- Total amount of police overtime including meetings, public disclosure requests, and providing police presence: \$98,960

In summary, the memo states: "From a police perspective, while many of the residents of Tent City were good citizens, and we did not see any increase in crime in the Maywood Hills neighborhood, there were many items regarding Tent City 4 that could have been done better. These items include finding a better site to house Tent City residents, improvements in site security, better identification of residents, and an improved screening process of prospective residents." *Exhibit A2*.

16. The Appellant's tenant, Sharmin Dominke, spoke on behalf of the appeal. Her back yard is adjacent to the church property and encampment site. When she arrived home on July 13, 2013, she found that the Tent City 4 residents had moved in over her property line, cleared some vegetation, and draped orange construction boundary over her fence. She was surprised they were not 110 feet away as depicted on the site plan. She testified that when she spoke with people at the encampment about their placement of the fence on her property, she was made to feel very threatened and so she called the police. After the police arrived, the encampment boundary was removed from her property line and brought into compliance with the site plan. She stated that the encampment did finally put up a six-foot tall fence after she put up her own fence. According to her testimony, the site plan and vicinity map are completely off from actual locations of tents. Further, she testified that the residents have no safe access so they walk up her driveway to get to the encampment. She testified that residents have four dogs; she disputes that these are service dogs, which are not supposed to run loose but should be in control of the human companion. She also stated that two cats appeared in her backyard after the encampment arrived. Although she has not seen people using her water hose, since the encampment arrived someone has been using her hose and putting it away differently from how they found it. She stated that she has not seen them drinking in the camp but she has seen

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<sup>4</sup> The Applicant objected to admission of Exhibits A2 and A5 from Mercer Island Police for want of authentication. The lack of authentication for each document is noted and goes to the weight rather than admissibility.

residents drink beer in her driveway and throw the cans in her recycle bin. Ms. Dominke testified that she had contacted Redmond Police with regard to Tent City 4 after July 13th. *Dominke Testimony.*

*City's Response to Appeal Issues*

17. In response to the issues raised on appeal, the City argued that the decision criteria for a temporary use permit were satisfied. Regarding the adequacy of the vicinity map and site plan, City Staff testified that the intent of the vicinity map is to give the viewer a general idea of where the encampment would be in relation to the church and surrounding properties. Staff asserted that the submitted site plan depicts the existing church building and the layout of the proposed encampment as it relates to the church, parking lot, a tree, and an accessory building. The vicinity map and site map are not prepared to scale and are not required to be. Staff contended that the City provided adequate notice to the public of the location and scale of the proposed encampment. *Fischer Testimony; Exhibit C1, pages 6-7; Exhibit C1, Attachments 1, 3, 4, and 9.*
18. Regarding the difficulties with installation of the encampment fence adjacent to the Appellant's property, City Staff was not present when the fence was installed but the fence was moved to meet approved site plan with the assistance of Redmond Police Department. *Fischer Testimony.*
19. Regarding the assertion that a temporary encampment at the church should have required conditional use permit review, City Staff argued that temporary uses associated with a church do not change its classification. Staff noted that the Zoning Code contains specific procedural requirements for temporary encampments as temporary uses and these procedures do not require conditional use permit review. Finally, Staff offered evidence not discovered until shortly before the hearing that the City had issued a conditional use permit for the existing church in 1977. If the existing church wanted to expand by adding a day care, the city would have to issue a site plan entitlement and building permits, but no conditional use review would be required. *Fischer Testimony; Exhibits C7 and C8.*
20. Regarding the walking conditions argued by the Appellant, City staff submitted the position that the safe walking route requirements of RCW 58.17.110 apply only to preliminary plats and are intended to ensure the safety of school children residents in new development. Staff contended that safe walking requirements do not apply to temporary uses. *Fischer Testimony; Argument in Exhibit C2.*
21. Regarding the allegations of increased crime, Planning Staff offered evidence of all calls to Redmond Police dispatch regarding the encampment since it began on July 13, 2013. The first call listed was Ms. Dominke's call regarding the location of the fence. Staff's document also showed all Tent City related calls while Tent City 4 was encamped at St. Jude's Church in Redmond from January 12, 2130 to April 20, 2013. *Fischer Testimony; Officer Sowers Testimony; Exhibit C4.*

22. Redmond Police Officer David Sowers testified on behalf of the City; he is employed as a neighborhood resource officer serving the area containing the subject property. Through his work as a police officer, he has gained familiarity with Tent City. Officer Sowers was the officer in charge on the response to Ms. Dominke's call on fence placement; he spoke with her that day. According to his testimony, when he understood the conflict, he looked at map posted on site and saw the fence was in the incorrect location. He confronted the residents and informed them they had to move the fence. They complied immediately; all corrections were made by the next morning because one correction had to wait for morning. Officer Sowers testified that in addition to the dispatch contacts listed in Exhibit C4, on at least one occasion he had received contacts by email regarding events at the current Tent City 4 relating to dogs, driveway use, and use of a private water faucet thought to be by residents of the encampment. He stated that he assumed this(these) additional contact(s) not reflected in the Exhibit C4 had not been presented as of criminal nature and that there had been no 911 call generating police response directly for those contacts. Next, Officer Sowers explained the procedure for check in at Tent City: when a warrant comes up on warrant check at admission, the individual cannot be admitted. If applicable, officers are dispatched. At the site, officers contact the subject, get warrant confirmation, and take the person into custody. If no arrest is made but the person still can't be admitted, the officer might give them a ride, or the individual could walk to the bus. When asked if having ejected persons with warrants walk away was a concern for safety reasons, the officer stated that citizens walking on public streets is not a problem. Officer Sowers testified that he believes there is no increase in crime when Tent City is in Redmond. The service calls identified in Exhibit C4 do not necessarily reflect crime; none show injury to persons or property outside of the encampment. There have been no arrests except for outstanding warrants. *Officer Sowers Testimony.*

#### *Applicant Response to Appeal Issues*

23. A current resident of Tent City 4 testified on behalf of the Applicant. He stated that there are two people on security at all times in order to reduce conflict within and without the encampment. In addition to keeping things peaceful and in an attempt to be better neighbors, security and other residents engage in neighborhood clean up. They maintain garbage receptacles at both bus stops. Tent City 4 maintains a good relationship with all police departments. According to the resident, both the police and the fire department have verified that the current encampment met all requirements of their application. Tent City 4 does outreach and reduces homelessness in the area. The current church host held a bible camp at the church next door to the encampment during which kids toured the tent city. The former Redmond host, St. Jude's, has many members who are regular donors and who visit regularly. The resident testified that he had been staying at Tent City 4 for five months. While there, he has been able to gain employment and to stay with his wife while they are in this transition. In his experience, the internal governance was effective. They hold elections and elect five people every two weeks to run the camp. *Robert Bowen Testimony.*
24. Pastor Todd Puckett of the Redwood Family Church testified on behalf of the Applicant. He stated there have been no significant problems so far and it has been a blessing to

have them. In order to better understand the circumstances, he moved in for three days to experience Tent City personally. He observed that the camp is made up of a lot of wonderful people on hard times, most of whom are working towards something better. He testified that Tent City is not a permanent solution to most people's problems but it does keep people off the streets during difficult transitions. In terms of benefits to the church and the surrounding community, Pastor Puckett testified that residents maintain the church landscaping very well and keep things tidy. He stated he would happily host the encampment again, because to do so is part of the service his faith directs him to perform. He considers it a privilege to serve them and he feels extremely proud to be able to show service instead of tell about service. The vacation bible school interaction was a very positive experience for the congregation; he felt highly confident that the children were safe in close proximity to the encampment. *Pastor Puckett Testimony.*

25. Scott Morrow, former employee of and current consultant to SHARE/WHEEL (since 1990) testified on behalf of the application. He has personally been involved with all applications since Tent City 4 began. Based on all previous experience working with Tent City, he thought the City of Redmond was thorough and fair during the review of the application and kept the Applicant apprised of all responsibilities. Despite the challenge on move in day, he stated the current encampment residents have done their best to comply with all requirements. Mr. Morrow stated that he regrets he was not notified of the move in day problem as it occurred; his contact number is posted on-site and he is the designated SHARE/WHEEL contact regarding any problems at any time. SHARE/WHEEL and the residents intend and desire to be good neighbors and want to be apprised of all reasonable concerns so they can be addressed immediately. Mr. Morrow testified that he understands they are currently in compliance with the permit. *Scott Morrow Testimony.*

26. On cross examination by counsel for the Applicant, Mr. Baumann conceded he did not conduct any independent studies of crime rates from Tent City encampments in Redmond or other local jurisdictions. Regarding whether the site plan is to scale, he conceded he did not personally measure the distances between encampment facilities and the property boundary. He testified he has not had to spend any money as a result of the encampment. Although the other witness had observed residents drinking alcohol outside the encampment, he had not personally seen this and has not had seen problems with garbage or sewer collection. *Baumann Testimony; West Argument.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner is authorized to conduct open record appeal hearings and issue decisions on appeals from Type I permit decisions, including Administrator determinations regarding impact temporary use permits for temporary encampments, pursuant to Redmond Zoning Code 21.76.050.B, 21.76.050.F, and 21.76.060.D.4.

Criteria for Review of the Appeal:

Appeals of Type I decisions are made to the Hearing Examiner in an open record hearing. The Hearing Examiner shall accord substantial weight to the decision of the Department Director. The Hearing Examiner may grant the appeal or grant the appeal with modifications if the Examiner determines that the appellant has carried the burden of proving that the Type I decision is not supported by a preponderance of the evidence or was clearly erroneous. *RZC 21.76.060.F; RZC 21.76.060.D.4; RZC 21.76.060.I.4.*

Other Applicable Provisions in the Redmond Zoning Code:

**RZC 21.46.010 (Temporary Use) Purpose**

The following provisions authorizing and regulating certain temporary uses are intended to permit temporary uses and structures when consistent with the Zoning Code and when safe and compatible with the general vicinity and adjacent uses.

**RZC 21.46.020 Scope**

- A. A short-term temporary use permit shall be required for any temporary use of no more than six months in duration. The six months need not run consecutively. The six months may occur at any time within a calendar year as long as each day of operation is designated and approved. A day of operation shall mean any or part of any day in which the business is conducted. Applications for a short-term temporary use permit (six months or less) shall follow the procedures for a Type I review pursuant to RZC 21.76.050.F or as modified herein. Short-term temporary use permits shall not be renewed, and any temporary use that will extend beyond six months shall be conducted only after approval of a long-term temporary use permit.
- B. A long-term temporary use permit shall..
- C. A long-term temporary use permit may be renewed, provided ....
- D. Upon expiration of the initial term of a short- or long-term temporary use permit or upon the expiration of any renewal term of a long-term temporary use permit, either:
  1. The temporary use shall immediately cease, and the property on which the use was located shall be restored as nearly as practicable to the state it was in prior to commencement of the temporary use; or
  2. If the applicant has applied for and received all permits necessary to make such temporary use permanent, the temporary use may continue until any necessary construction under such permits is completed and the use meets all requirements for a permanent use of the property as long as the applicant diligently pursues completion of the improvements and compliance with the requirements.
- E. The following types of temporary uses, activities and associated structures may be authorized, subject to specific limitations noted herein and as noted in RZC 21.46.030, Decision Criteria, and as may be established by the Administrator:
  6. Temporary encampments that comply with the conditions outlined in this chapter;

**RZC 21.46.030 Decision Criteria**

- A. Temporary uses may be authorized only when all the following determinations can be made:
  1. The temporary use will not impair the normal, safe, and effective operation of a permanent use on the same site.

2. The temporary use will not significantly impact public health, safety or convenience, or create traffic hazards or congestion, or otherwise interrupt or interfere with the normal conduct or uses and activities in the vicinity.
  3. The temporary use will not be materially detrimental to the surrounding uses in terms of traffic, noise, and other external effects.
- B. General Conditions.
1. A temporary use conducted in a parking facility shall ....
  2. Each site occupied by a temporary use must provide or have available sufficient parking and vehicular maneuvering area for customers or other users. ....
  3. The temporary use shall comply with all applicable standards of the Seattle-King County Health Department.
  4. No temporary use shall occupy or use public parks in any manner unless specifically approved by the Parks Department.
  5. All temporary uses shall obtain, prior to occupancy of the site, all applicable City of Redmond permits, licenses and other approvals (e.g., business license, building permit, administrative approvals, etc.).
  6. The applicant for a temporary use shall supply written authorization from the owner of the property on which the temporary use is located.
  7. Each site occupied by a temporary use shall be left free of debris, litter, or other evidence of the temporary use upon completion of removal of the use.
  8. All materials, structures, and products related to the temporary use must be removed from the premises between days of operation on the site....
  9. Additional conditions may be established as necessary to ensure land use compatibility and to minimize potential impacts on nearby uses. These include, but are not limited to, time and frequency of operation, temporary arrangements for parking and traffic circulation, requirement for screening or enclosure, and guarantees for site restoration and cleanup following temporary uses.
- C. Temporary encampments must also meet the following criteria:
1. The applicant shall apply for a temporary use permit at least 30 days before the planned opening of the temporary encampment.
  2. The encampment shall be limited to a maximum of 100 persons. After the encampment reaches its 100-person capacity, individuals who arrive after sundown (and meet all screening criteria) will be allowed to stay for one night, after which they will not be permitted entry until a vacancy is available. Such occurrences shall be logged and reported to the City on a weekly basis.
  3. A temporary encampment shall be limited to a maximum of 110 days within any 365-day time period at one location. This 110-day time limit shall control over the six-month time limit specified for short-term temporary uses in RZC 21.46.020.A.
  4. The encampment or the parking of any vehicles associated with the application shall not displace the host site's parking lot in such a way that the host site no longer meets the minimum or required parking of the principal use as required by code or previous approvals unless an alternative parking plan has been approved by the Administrator.
  5. The temporary encampment managing organization shall maintain a resident log for all who are residing at the encampment. Such log shall be kept on-site at the encampment. Prospective encampment residents shall be asked to provide a reasonable form of identification when signing the log.

6. The Administrator may impose additional conditions for the purpose of maintaining the health, safety, and welfare of people in and around the temporary encampment, relating but not limited to any or all of the following:
    - a. Encampment resident code of conduct;
    - b. The presence of minors in the encampment;
    - c. The provision of transportation to/from the encampment; and
    - d. Setbacks and screening.
- D. Temporary encampments shall be processed as a Type I Permit with the following modifications:
1. A Notice of Application shall be mailed and posted on-site meeting the standards outlined in RZC 21.76.080.B, *Notice of Application*.
  2. A minimum of one Major Land Use Action Sign shall be posted on-site meeting the requirements outlined in RZC Appendix 6, *Extraordinary Notice Requirements*.
  3. Prior to the decision on the application for a temporary encampment, the Administrator shall require that a neighborhood meeting be held.

Conclusions Based on Findings:

1. The RZC requires the Examiner to accord substantial weight to the Administrator's decision in Type I applications. *RZC 21.76.060.I.4*. In the context of according deference to administrative decisions, Washington courts have held that an agency's decisions will not be overturned unless evidence in the record shows the agency has "engaged in an unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; ... [or] [t]he agency has erroneously interpreted or applied the law." *Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Board*, 100 Wn.App. 341, 363 (2000). The Redmond Zoning Code requires an Appellant to demonstrate the decision is not supported by the preponderance of evidence or is clearly erroneous. Courts have held that an action is clearly erroneous when it leaves the reviewing [authority] with "the definite and firm conviction that a mistake has been committed." *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 894 (2004). When applying the clearly erroneous standard, the Hearing Examiner must not substitute his own judgment for the judgment of the agency. *See Buechel v. Department of Ecology*, 125 Wn.2d 196 (1994).
2. Consistent with the general temporary use and the specific temporary encampment provisions of the Redmond Zoning Code, the application was timely submitted and demonstrated approval by the land owner. Conditions of approval ensured the following: a maximum duration of 110 days; that the temporary use would restore the site upon removal; compliance with applicable health codes; prohibition against occupying a significant portion of the church's parking area; limitation to 100 residents maximum; maintenance of a resident log available for inspection; exclusion of any minors as residents; warrant and sex offender checks for all prospective residents and reporting to police; mandatory quiet time between 9:00 pm and 6:00 am; compliance with the Tent City 4 Code of Conduct; and visual screening from adjacent residential uses. Notice of application was timely and correctly provided. The required public meeting was held and public comment on the application and from the meeting were considered prior to permit issuance. The vicinity map and site plan distributed with notice of hearing were not

required to be to scale. As distributed, they were sufficient to apprise people of the general size, location, and scope of the encampment. Conditional use permit review was not triggered by the application; the requested temporary use permit was appropriately reviewed for compliance with the general temporary use standards and the temporary encampment-specific standards at RZC 21.46.020 and .030. The record does not demonstrate any procedural failure on the part of the City in issuing permit approval. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 16, 17, 19, and 26.*

3. The safe walking conditions cited by the Appellant originate in state law at RCW 58.17.110. The provision is intended to ensure that new residential development provides adequate safe walking conditions for school aged residents who will walk to and from school. The provisions do not apply to the instant temporary use permit. *Findings 12 and 20; RCW 58.17.110.*
4. Evidence regarding the alleged increases in crime failed to demonstrate any significant impact to public safety, interference with the normal conduct of uses in the vicinity, or materially detrimental impacts to surrounding uses. At the time of hearing, the use had been in effect for approximately three weeks. Evidence of police department-reported incidents related to the encampment in those three weeks did not amount to a significant increase in crime. Evidence offered regarding the move in day perimeter conflict and subsequent alleged use of driveway, recycle bin, and garden hose, while unfortunate, do not demonstrate an increase in crime that rises to the level of materially detrimental or significant interference with surrounding uses. Crime-related evidence from other jurisdictions offered by the Appellant did not show a significant increase in crime resulting from the temporary encampments in those jurisdictions. The Appellant's allegations can at best be characterized as a generalized concern regarding potential increased crime. Washington courts have held that such generalized concerns are not an appropriate basis for denial of a land use permit. *Sunderland v. City of Pasco, 127 Wn.2d 782, 787 (1995); Findings 14, 15, 16, 21, 22, 23, 24, 25, and 26.*

### DECISION

Based on the foregoing findings and conclusions, the Appellant did not demonstrate that the City's June 27, 2013 temporary use permit was approved through a flawed procedure, was not supported by a preponderance of the evidence, or was clearly erroneous. Because the record provided does not show clear error, the appeal must be **DENIED**.

**Decided** September 16, 2013.

By:



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Sharon A. Rice  
City of Redmond Hearing Examiner

**Note:** Pursuant to RZC 21.76.060.M, Type I appeal decisions of the Hearing Examiner may be appealed to the City Council in a closed record appeal proceeding as provided in RZC 21.76.060.M. Any party with standing (detailed at RZC 21.76.060.M.2.a) may appeal this decision by filing the appropriate appeal form along with the required fee no later than 5:00 pm 10 business days following the expiration of the reconsideration period. See RZC 21.76.060.M for further detail on appeal requirements.