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CITY OF SAMMAMISH

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

File Number: PLN2011-00003

Appellant: Friends of SE 20th Street
C/o Mark S. Davidson
Williams, Kastner & Gibbs, PLLC
601 Union Street, Suite 4100
Seattle, WA 98101

Respondent: Kamuron Gurol, Director of Community Development
City of Sammamish
C/o Kari Sand, City Attorney
Kenyon, Disend, LLC
11 Front Street S.
Issaquah, WA 98075

Applicant: Khadim Muhammad Arshad, for
Sammamish Muslim Association
C/o Tadas Kisielius
Millennium Tower
719 Second Avenue, Suite 1150
Seattle, WA 98104

Type Of Case: Appeal from: 1) Conditional Use Permit/Commercial Site Development Permit;
and 2) State Environmental Policy Act Determination of Nonsignificance

Examiner Decision: 1) GRANT Conditional Use Permit/Commercial Site Development Permit appeal
IN PART; and 2) DENY State Environmental Policy Act Determination of
Nonsignificance appeal

Date Of Decision: March 18, 2013

INTRODUCTION ¹

On March 4, 2011, Khadim Muhammad Arshad, as property owner and on behalf of the Sammamish Muslim Association (SMA), filed an application for a Conditional Use Permit (CUP) and Commercial Site Development Permit (CSDP) seeking permission to use an existing single-family residence as an Islamic prayer house and to construct an associated parking lot, sidewalks, frontage improvements, and stormwater facilities. (Exhibit S-1 ²) On March 17, 2011, the Sammamish Department of Community Development (the Department) issued a letter stating that the CUP and CSDP applications had been found complete for vesting as of March 11, 2011. (Exhibit S-2) On March 31, 2011, the Department issued a Notice of Application which indicated that “the optional DNS process as specified in WAC 197-11-355 is being utilized.” (Exhibit S-21a) A formal public comment period ran from that date through April 21, 2011. ³ (*Ibid.*)

On September 6, 2012, the Department issued a State Environmental Policy Act (SEPA) threshold Determination of Nonsignificance (DNS) and a Decision approving both the CUP and CSDP applications subject to 34 conditions. (Exhibits S-11 and S-19, respectively)

On September 25, 2012, Friends of SE 20th Street (FOSE20) timely filed an appeal from both the DNS and issuance of the CUP and CSDP. (Exhibit E-1) FOSE20’s appeal lists five specific allegations of error in the Department’s actions, denominated as “Alleged Errors” 2 – 6. ⁴ The five alleged errors will hereafter be identified as Appeal Issues 2 - 6

The subject property is located at 22011 SE 20th Street, approximately midway between 228th and 212th Avenues SE on the south side of SE 20th Street. (Exhibit S-12, p.3, Fig. 1)

On November 7, 2012, the Sammamish Hearing Examiner (Examiner) held a prehearing conference with the principal parties at the request of the Department. (Exhibits E-2 and E-3) The results of the prehearing conference are memorialized in Exhibit E-4.

The Examiner convened an open record hearing on February 11, 2013, which was continued to and concluded on February 12, 2013. The City gave notice of the hearing as required by SMC 20.10.180(2). (Exhibit S-35)

Pursuant to Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c) and Exhibit E-4, ¶3.B, the Examiner entered the following administrative exhibits into the hearing record:

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.
³ Over the course of its involvement with SMA’s prayer house, the Department received over 500 E-mails, some for, some against. (Exhibits S-3 and S-34)
⁴ “Alleged Error” 1 is simply a summary section containing four paragraphs.

- Exhibit E-1: Appeal of Administrative Decisions, received September 25, 2012
- Exhibit E-2: E-mail string, Maxim – Anderson - Galt, October 3, 2012 (requesting convening of a prehearing conference; copy provided to principal parties at the prehearing conference)
- Exhibit E-3: Notice of Prehearing Conference, issued October 9, 2012
- Exhibit E-4: Order Memorializing a Prehearing Conference, issued November 8, 2012
- Exhibit E-5: E-mail string, January 14 & 15, 2013 (assigning additional exhibit numbers and authorizing Response submittal)
- Exhibit E-6: Interlocutory Order of Partial Summary Dismissal, issued January 28, 2013
- Exhibit E-7: E-mail, February 8, 2013 (Procedural agreements among the principal parties)

Pursuant to RoP 224 and Exhibit E-4, ¶3, the Department pre-filed Exhibits S-1 – S-27 and provided an index listing of those exhibits. The Examiner assigned exhibit numbers S-28 – S-33 to documents generated by the Department in the prehearing proceedings but not catalogued by the Department. Neither FOSE20 nor SMA objected to entry of Exhibits S-1 – S-33. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i), during the hearing the Examiner entered Exhibits S-34 – S-36. Exhibits entered but not included in the Department's index list are:

- Exhibit S-28: City of Sammamish's Motion for Partial Summary Judgment on Pollution Issue, January 3, 2013
- Exhibit S-29: Declaration of Evan Maxim (in support of Exhibit S-28), January 3, 2013
- Exhibit S-30: Proposed Order of Partial Summary Judgment
- Exhibit S-31: City of Sammamish's Reply in Support of its Motion for Partial Summary Judgment on Pollution Issue, January 17, 2013
- Exhibit S-32: Second Declaration of Evan Maxim (in support of Exhibit S-31), January 17, 2013
- Exhibit S-33: City of Sammamish's Prehearing Brief, February 4, 2013
- Exhibit S-34: E-mails (4) from citizens
- Exhibit S-35: Hearing Notice
- Exhibit S-36: SE 20th Street, Hourly Traffic Count, March 19 – March 25, 2011

Pursuant to RoP 224 and Exhibit E-4, ¶3, FOSE20 pre-filed Exhibits F-1 – F-15 and provided an index listing of those exhibits. The Examiner assigned exhibit numbers F-16 and F-17 to documents generated by FOSE20 in the prehearing proceedings but not catalogued by FOSE20. The Department and SMA objected to entry of Exhibit F-3. After allowing brief oral argument, the Examiner denied the objections and entered Exhibits F-1 – F-17 into the hearing record. Pursuant to RoP 224(i), during the hearing the Examiner entered Exhibits F-18 and F-19. Exhibits entered but not included in FOSE20's index list are:

- Exhibit F-16: Appellant's Memorandum in Opposition to Motions for Partial Summary Judgment, January 14, 2013
- Exhibit F-17: Appellant's Hearing Memorandum, February 4, 2013
- Exhibit F-18: Islamic Prayer Times Schedule 2013 for Bellevue, WA

Exhibit F-19: "City receives 51-acre gift of parkland," May 2010 article

Pursuant to RoP 224 and Exhibit E-4, ¶3, SMA pre-filed Exhibits A-1 – A-11 and provided an index listing of those exhibits. The Examiner assigned exhibit numbers A-12 – A-14 to documents generated by SMA in the prehearing proceedings but not catalogued by SMA. Neither the Department nor FOSE20 objected to entry of Exhibits A-1 – A-14. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i), during the hearing the Examiner entered Exhibit A-15. Exhibits entered but not included in SMA's index list are:

Exhibit A-12: Declaration of Mazen Haidar (in Support of Exhibit A-11), January 4, 2013
Exhibit A-13: Applicant's Reply on Motion for Partial Summary Judgment, January 18, 2013
Exhibit A-14: Applicant's Pre-Hearing Brief, February 4, 2013
Exhibit A-15: Islamic Prayer Times Schedule 2013 for Seattle, WA

Closing statements were both oral and written. FOSE20 indicated in its oral closing that it would include some suggested permit condition revisions in its written closing statement and agreed to submit them in advance so the other parties would be able to comment on them in their closing statements. The Examiner held the record open for those documents in accordance with a schedule suggested by and mutually agreed to by the parties:

Exhibit No.	Document	Due Date	Date Filed
F-20	Suggested permit condition changes	February 25, 2013	February 25, 2013
A-16	SMA's written Closing Statement	March 1, 2013	March 1, 2013
S-37	Department's written Closing Statement	March 8, 2013	March 8, 2013
F-21	FOSE20's written Closing Statement	March 15, 2013	March 15, 2013

The Administrative Assistant to the City Clerk has the record copy of all exhibits and exhibit index lists.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

SUMMARY DISMISSALS

On January 4, 2013, the Department filed a Motion for Partial Summary Judgment on Pollution Issue. (Exhibit S-28) Also on January 4, 2013, SMA filed a Motion for Partial Summary Judgment. (Exhibit A-11) The Department sought dismissal of Appeal Issue 5 (Air Impacts); SMA sought dismissal of Appeal Issues 5 and 6 (Drainage). Pursuant to the prehearing conference Order (Exhibit E-4), FOSE20 filed a Response to the Motions (Exhibit F-16) and the Department and SMA filed Replies (Exhibits S-31 and A-13, respectively).

On January 28, 2013, the Examiner issued an Interlocutory Order dismissing Appeal Issue 5 as to the CUP and CSDP applications/permits and dismissing Appeal Issue 6 in its entirety. (Exhibit E-6) Exhibit E-6 is incorporated herein by reference as if set forth in full.

At the close of FOSE20's case in chief, SMA orally moved for dismissal of the remaining portion of Appeal Issue 5 based on lack of presentation of evidence or testimony in support thereof. The Department orally joined in the Motion. FOSE20 did not object. The Examiner orally dismissed Appeal Issue 5 as to the DNS, thus resulting in the dismissal of Appeal Issue 5 in its entirety.

FINDINGS OF FACT

A. General

- A1. SMA is a not-for-profit corporation founded in 2008 to provide support to area Muslims. Any Muslim who is willing to abide by its rules may belong. SMA serves about 60 Muslim families living in the Sammamish area. (Hassane testimony)
- A2. The general term for an Islamic worship and/or educational facility is "mosque." A mosque intended for large gatherings is called an "Islamic Center." There are three Islamic Centers on the Eastside: One in Bellevue and two in Redmond. A "masjid," or prayer house, is a "satellite mosque" intended to provide a local facility for required daily congregational prayers. (See Findings of Fact A9 and A10, below.) If the Muslim population in an area grows, the standard practice is to establish another masjid to serve the new followers rather than to enlarge an existing masjid.⁵ There are presently three masjids on the Eastside: One each in Bothell and Snoqualmie, and the facility on the SMA property. (Fayed and Hassane testimony)
- A3. SMA purchased the subject property (Tax Parcel 0424069061; also referred to herein as the SMA property) so that it could use the existing residence on the property as a masjid. SMA has no intention to convert the facility into an Islamic Center. Before purchasing this property, SMA explored other areas of Sammamish. At the time it was looking, it found nothing else that would fit its needs within its budget. (Exhibits S-1 and S-5(1) {pp. 4 and 5} and Fayed and Hassane testimony)
- A4. The subject property is a 2.24 acre, basically rectangular site with approximately 365 feet of frontage on the south side of SE 20th Street. It has a north-south depth of approximately 309 feet on the west side and 233 feet on the east side. A 2,900 square foot (SF) rambler style, single-family residence is located in the southwest corner of the site about 35 feet north of the southernmost property line. The residence is accessed via a private drive (known as 220th Avenue SE) located within a 20 foot wide easement along the west side of the property which also serves one off-site residence. The property

⁵ In Abu Dhabi, a predominantly Muslim country in the Middle East, masjids are ubiquitous: They are found on the ground floor of many buildings and are also often provided at gas stations. (McKinney testimony)

has a rather gentle slope towards the southeast. The eastern half of the SMA property is an open field; the western half has some trees around the residence and a hedge running essentially the full length of the western property line, west of the private drive. (Exhibits S-7, S-18, and S-19 {Finding 14})

- A5. The on-site residence has seven (7) rooms in its 2,900 SF: SMA uses two for prayer services (352 SF for men; 357 SF for women), one as a computer room, one as a classroom, one as a children's play room, one as an office; there is also a kitchen and bathroom. (Exhibits S-4(2) {TSI April 21, 2011, letter}, S-5(1), and S-12 {p.1, Table 1})
- A6. The SMA property is bordered on the east by the Allaire property (Tax Parcel 0424069214). The Allaire property is a trapezoidal-shaped parcel with approximately 175 feet of frontage on the south side of SE 20th Street and an average depth of 265 feet. It contains slightly over one acre. The paved driveway to the Allaire residence is located about eight feet east of the common boundary with the SMA property.⁶ The Allaire residence is located about 170 feet south of the edge of the SE 20th Street pavement and about 65 feet east of the common SMA/Allaire property line.⁷ The west end of the Allaire residence contains a multi-car garage with an apparent living space above. (Exhibits F-11 {p. 8}, S-7 {Sheet C2.0}, S-8 {Photograph 1}, and S-18 and Allaire testimony)
- A7. The SMA property is bordered on the south by the Hall property (Tax Parcel 0424069277). The Hall property includes a guest house and a converted barn which is the Halls' main residence. The guest house is about 5 – 10 feet south of the common SMA/Hall property line; the main residence is about 35 feet south of the common property line.⁸ The Hall residence is accessed via the previously described private drive over the SMA property. (Exhibits S-7 {Sheet C2.0} and S-18 and Hall testimony)
- A8. Across SE 20th Street from the SMA property is the Pigott family's "Frog Pond Farm," a 51.15 acre assemblage of three tracts which extends north to SE 8th Street. In or around 2010, Pigott entered into an agreement with the City through which she would donate the entire 51.15 acres to the City in three steps, spaced several years apart. The northern tract has been donated to the City; the middle tract donation is expected in the near future; the southern tract fronting on SE 20th Street is not expected to be received for another 12 – 15 years. The terms of the agreement call for the property to be used as a public park, but prevent use for ball fields or large park structures. (Exhibits F-1 and F-19 and Maxim testimony)
- A9. Prayer is one of the five pillars of Islam. Devout Muslims are expected to perform five daily prayers. Each daily prayer takes between five and 15 minutes. The preferred form of prayer is group or

⁶ The Allaire driveway is paved, contrary to the notation on Exhibit S-7 that it is gravel. (Exhibit F-11, p.8)

⁷ Some distances scaled from Exhibits S-7 and S-18.

⁸ Some distances scaled from Exhibits S-7 and S-18.

congregational prayer, although with some exceptions prayers may be said privately. (Hassane testimony)

- A10. Islamic seasons are determined by the lunar calendar, but the timing of the required daily prayers is determined by the sun's path in the sky. Therefore, prayer times vary throughout the year in concert with the changes in the sun's path. Further, for any given day, the times differ depending upon where one is physically located in the world. With but one exception, the "window of opportunity" for each required prayer is between the allowed starting time for that prayer and the starting time for the next prayer. Charts are available which specify the allowed start times for each prayer for each day of the year based upon location. Exhibit A-15 is that chart for Bellevue, Washington, for 2013. Times given in the remainder of this Decision are based upon Exhibit A-15 and are stated for calendar year 2013.
- A. Dawn prayer is Fajr. Fajr must be said after dawn but before sunrise. (This is the one exception to the general rule.) The earliest that Fajr occurs is June 12 – 21 when it must be said between 3:55 and 5:10 – 5:11 a.m.; the latest that Fajr occurs is December 29 – 31 when it must be said between 6:56 and 7:57 a.m. (Exhibit A-15)
 - B. Noon prayer is Dhuhr. The earliest that Dhuhr occurs is November 3 - 5 when it must be said between 11:53 a.m. and 2:21 – 2:24 p.m.; the latest that Dhuhr occurs is July 12 - August 7 when it must be said between 1:16 and 5:16 - 5:27 p.m. (Exhibit A-15)
 - C. The mid-afternoon prayer is Asr. The earliest that Asr occurs is December 6 – 10 when it must be said between 2:00 and 4:18 – 4:19 p.m.; the latest that Asr occurs is June 28 – July 10 when it must be said between 5:28 and 9:07 – 9:12 p.m. (Exhibit A-15)
 - D. Sunset prayer is Maghrib. The earliest that Maghrib occurs is December 7 – 13 when it must be said between 4:18 and 6:03 p.m.; the latest that Maghrib occurs is June 22 – 28 when it must be said between 9:12 and 10:57 p.m. (Exhibit A-15)
 - E. Night prayer is Isha. Isha may be said anytime between when the sky becomes fully dark and dawn. The earliest that the Isha window opens is at 6:03 p.m. on December 7 – 13; the latest that the Isha window opens is at 10:57 p.m. on June 22 – 28. (Exhibit A-15 and Fayed testimony)
 - F. Every Muslim male over the age of puberty is expected to attend Friday Assembly at a mosque. Friday Assembly begins with a sermon by the Imam (prayer leader) and concludes with Dhuhr. Friday Assembly typically lasts about an hour, including Dhuhr. (Exhibit S-5(1) {p. 4} and Hassane and Fayed testimony)
 - G. The holiest month of the lunar year for Muslims is Ramadan. Because Ramadan is based on the lunar calendar, it shifts back 11 days every calendar year. Ramadan currently falls during our summer months; it will be 30 years before it again occurs at the same time in the

summer. During Ramadan, Muslims observe an optional prayer after Isha which is said in “units.” Depending upon how many units a worshipper elects to say, the optional Ramadan prayers add 15 to 60 minutes to the length of Isha. (Fayed testimony)

- A11. It is up to the individual Muslim or Muslim congregation to set the specific time for daily prayers within the religiously-allowed windows of opportunity. The actual time that a congregational prayer starts is called the Iqamah. Rather than have the Iqamah times shift every day of the year, the SMA sets Iqamah times on a weekly basis so that all the prayers for that week will occur at fixed times and will fall within the allowed windows of opportunity. (Hassane and Fayed testimony) For example, the Iqamah times for early February, 2012, were: Fajr = 6:15 a.m.; Dhuhr = 12:30 p.m.; Asr = 3:30 p.m.; Maghrib = 5:15 p.m.; and Isha = 8:00 p.m. (Exhibit F-10, p. 2) The SMA typically sets Friday Assembly for noon to 1:00 p.m. in the winter and 1:00 to 2:00 p.m. in the summer. The 8:00 p.m. Iqamah for Isha is also fairly standard throughout the year. (Fayed testimony)
- A12. SMA began holding daily prayer services in the on-site residence after purchase of the property in 2010. To celebrate the opening of the masjid, SMA scheduled a special speaker for two of the required Friday Assemblies. Those sessions attracted about 50 – 60 worshipers each and led to the filing of complaints with the City by neighbors. (Fayed testimony) The Department investigated and concluded that SMA was operating a church without first obtaining a required CUP. A code compliance case was initiated in July, 2010; SMA entered into a Voluntary Compliance Agreement (VCA) with the Department in October, 2010, in which it admitted the violation and agreed to a series of corrective actions: Use another site for large (greater than 20 persons) gatherings by not later than September 15, 2010; limit the maximum number of vehicles parked on the property at any one time to not more than eight (8) by not later than September 8, 2010; conduct no schooling or long term day care until appropriate land use permit(s) had been obtained; apply for a CUP and related permits by not later than March 4, 2011; comply with CUP and associated permit conditions within 18 months of the effective date of the permits; and other actions that are not germane to this proceeding. (Exhibits F-2, S-6, and S-19 {p. 3, ¶10})
- A13. SMA has its masjid open for all required prayers under limitations imposed by the VCA. (Exhibit S-6) Friday Assembly has been held at the Beaver Lake Lodge or nearby (on 228th Avenue SE) Mary, Queen of Peace Catholic Church because of the larger attendance. (Fayed testimony). Attendance varies widely depending upon the time of day and day of week. (Exhibit S-12 {p. 6, Table 2} and Hassane and Fayed testimony)
- A. Fajr. When Fajr occurs in the very early morning hours in summer, attendance at the masjid is in the one to four worshipers range; in the winter it is typically in the six to eight range.
- B. Dhuhr and Asr. The noon and early afternoon prayers are usually said at the workplace. Therefore, attendance at SMA’s masjid for these prayers ranges from zero to two.

- C. Maghrib. Relatively few attend sunset prayer in the winter; more attend that service in the summer.
 - D. Isha. Isha is the best attended of the daily prayers on an annual, average basis with between seven and 15 attendees (including children). However, when the window of opportunity for Isha opens late in the evening in summer, attendance drops to usually only one or two persons.
 - E. Friday Assembly. Attendance at Friday assembly currently ranges from 15 to 35 worshipers.
 - F. Ramadan. Maximum attendance at special Ramadan services ranges from 35 to 46 persons.
- A14. Not all worshippers arrive at the same time for a required prayer. Some may arrive five to 10 minutes early to say an optional prayer; some may arrive late. (As long as a person joins the prayer before its close, he/she is credited with having performed the prayer.) Worshipers tend to leave promptly after morning prayers, but departures are more spread out after evening prayers. (Fayed testimony)
- A15. In addition to daily prayers, the SMA will use the masjid for weekly religious instruction, and occasional gatherings: Weddings, memorial services, pot-lucks, etc. (Exhibit S-5(1), p. 5)
- Day care is not proposed. An audible call to prayer will not be used at the SMA masjid. (Exhibit S-5(1), pp. 5 and 6)
- A16. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

B. Appeal Issue 2: Compatibility

B1. Appeal Issue 2 reads in full as follows:

2. The Project Is Not Compatible With the Surrounding Vicinity

Applicant has argued that the religious practices to take place in the Prayer House are compatible with the neighborhood. That argument is utterly beside the point. The permit applications seek approval for a proposed commercial parking lot, with light, glare, noise and increased traffic and stormwater runoff which the City erroneously concluded was compatible with the character and appearance of the existing residential vicinity of the subject property.

(Exhibit E-1, p. 3)

B2. The SMA property is a short distance north of Pine Lake. (Pine Lake is visible in the lower right hand corner of Exhibit S-18.) Some residents describe the area as rural and idyllic. (E.g.: Exhibit F-6) FOSE20 characterizes the area as “a semi-rural neighborhood of single family homes”. (Exhibit E-

1, p. 3) While there are a few acreage lots along the SE 20th Street corridor, the majority of the area consists of residential subdivisions in the one-quarter to one-third acre lot size range. Lots along the north shore of Pine Lake are quite narrow and compact. (Exhibits S-18 and S-27)

- B3. The SMA property and most of the surrounding area are designated for residential development at up to four (4) dwelling units per acre (R-4) by the adopted City Comprehensive Land Use Plan (Comp Plan). The east edge of the SMA property abuts the southern end of an approximate 60± acre north-south swath of land designated for residential development at up to six (6) dwelling units per acre (R-6). That swath encompasses most if not all of Frog Pond Farm on the north side of SE 20th Street, and the Allaire property and the property to its east and south lying west and north of 222nd Avenue SE-SE 21st Place on the south side of SE 20th Street. (Exhibit S-27)

Sammamish has some areas within the City designated by the Comp Plan for residential development at no more than one dwelling unit per acre. The nearest such area to the SMA property lies west of the north end of Frog Pond Farm. (Exhibit S-27)

- B4. The Comp Plan contains Land Use Goals (LUG), Land Use Policies (LUP), a Housing Goal (HG), and Housing Policies (HP) relevant to siting a religious facility on the SMA property:

GOAL LUG-4: Establish a community that maintains and enhances the quality of family life within Sammamish. [Comp Plan, p. III-5]

LUP-4.3 Parks, schools, churches and other public and semi-public buildings should be encouraged to locate on sites that give the community and neighborhoods landmarks and an identity, without creating adverse impacts on environmentally sensitive areas. [Comp Plan, p. III-13]

GOAL LUG-8: Respect the character, integrity, and unique qualities of existing neighborhoods. [Comp Plan, p. III-5]

LUP-8.4 Appropriately scaled schools, churches, home occupations, parks, open spaces, day care facilities and other such uses may be appropriate uses within a neighborhood. Regulations within the City Code should contain clear and appropriate standards for siting and designing these uses. [Comp Plan, pp. III-17 & 18]

GOAL HG-1 Promote the preservation and enhancement of safe and accessible residential neighborhoods that create an attractive living environment. [Comp Plan, p. VI-11]

HP-1 Land use policies and regulations should emphasize compatibility with existing neighborhood character. In areas where the existing character is in

transition, new development should be designed to incorporate the qualities of well-designed neighborhoods. [Comp Plan, p. VI-12]

HP-2 Land use policies and regulations should provide for a compatible mix of land uses and housing types in and around residential neighborhoods. [Comp Plan, p. VI-12]

The Department and SMA cited LUG-4, LUP-4.3, LUG-8, and LUP-8.4. (Exhibits S-33 {pp. 4 and 5} and A-14 {p. 15}) FOSE20 cited HG-1. (Exhibit F-17, pp. 3 and 4) None of the parties cited HP-1 or HP-2.

- B5. The zoning pattern of the area generally matches the Comp Plan designations. The SMA property and most of the surrounding area are zoned R-4. Frog Pond Farm and the Allaire property are zoned R-6. (Exhibit S-26)

All “R” zones are considered “Urban residential.” The number following the “R” represents “base density in dwelling units per acre”. [SMC 21A.10.010]

(1) The purpose of the urban residential (R) zone is to implement comprehensive plan goals and policies for housing quality, diversity, and affordability and to efficiently use urban residential land, public services, and energy. These purposes are accomplished by:

(a) Providing, in the R-1 through R-8 zones, for a mix of predominantly single detached dwelling units and other development types, with a variety of densities and sizes in locations appropriate for urban densities;

(b) ...;

(c) Allowing only those accessory and complementary nonresidential uses that are compatible with urban residential communities; and

(d) Establishing density designations to facilitate advanced area-wide planning for public facilities and services, and to protect environmentally sensitive sites from overdevelopment.

(2) Use of this zone is appropriate in urban areas or activity centers, designated by the comprehensive plan or community plans as follows:

(a) ...;

(b) The R-4 through R-8 zones on urban lands that are predominantly environmentally unconstrained and are served at the time of development, by adequate public sewers, water supply, streets, and other needed public facilities and services; and

...

[SMC 21A.10.030]

B6. Permitted residential uses in the R-4 and R-6 zones include single-family detached dwellings, townhouses, duplexes, accessory dwelling units, home occupations, and bed and breakfast guesthouses. [SMC 21A.20.030(A)] Non-residential uses which are permitted by right in the R-4 and R-6 zones include: Parks and trails; golf facilities; libraries, museums, and conference centers (under limited circumstances); daycare (when accessory to a residence, school, church, etc.); “Churches, synagogue, temple” and “Office/outpatient clinic” (but only when a re-use of a former public school facility); elementary, middle/junior high schools, and high schools; court and police facilities; and off-street required parking lots. [SMC 21A.20.040(A), .050(A), and .060(A)]

B7. A conditional use is “a permitted use on a particular property [which is] subject to conditions placed on the permitted use to ensure compatibility with nearby land uses.” [SMC 21A.15.230]

Conditional uses in the R-4 and R-6 zones include: Mobile home parks; home industries; sports clubs; libraries, museums, and conference centers; funeral homes; daycare centers; “Churches, synagogue, temple;” social service facilities; hospitals; public utility yards and offices; and fire stations. [SMC 21A.20.040(A), .050(A), and .060(A)]

B8. Chapter 21A.40 SMC sets “minimum off-street parking standards for different land uses”. [SMC 21A.40.010(1)] Section 21A.40.030 SMC sets minimum required off-street parking requirements for a wide variety of listed land uses, typically based on a ratio of parking spaces to number of residential units or square feet of building area. If SMC 21A.40.030 “does not specify a parking requirement for a land use,” then the Department shall set the minimum requirement. [SMC 21A.40.020(2)]

The off-street parking requirement for “Churches, synagogue, temple” is “1 per 5 fixed seats, plus 1 per 50 square feet of gross floor area without fixed seats used for assembly purposes”. [SMC 21A.40.030(1)]

Off-street parking for non-residential uses in residential zones must have “at least a portion” of the parking area within 150 feet of the building being supported by the parking. [SMC 21A.40.110(1)(c)] Driveways serving nonresidential parking lots must be not closer than five feet to the adjacent property line. [SMC 21A.40.110(5)] Parking for nonresidential uses in residential zones may be located in required setback areas. [SMC 21A.40.110(6)(c)] Lighting is required for safety unless waived by the Department Director. When required, “[i]t shall be designed to minimize direct illumination of abutting properties and adjacent streets.” [SMC 21A.40.110(7)]

Twenty feet of Type II landscaping is required along the street frontage of all “institutional” uses. [SMC 21A.35.040(1)] Ten feet of Type II landscaping is required along interior lot lines of institutional uses. [SMC 21A.35.050(4)] “Type II” landscaping is “[a] mix of evergreen and deciduous trees and shrubs generally interspersed throughout the landscape strip spaced to create a filtered screen”. [SMC 21A.35.030(2)]

- B9. The SMA masjid has no fixed seats: Muslims do not sit in chairs or pews to pray. Therefore, the fixed seat portion of the minimum parking requirement formula for churches has no applicability to SMA's masjid. Two rooms in the structure are used for "assembly" (prayer). Those rooms total 709 SF. (Exhibit S-12, p. 1, Table 1) Based on the one space per 50 SF of assembly space, the SMC would require only 14 parking stalls ($709 \div 50 = 14.18 \approx 14$) for SMA's masjid.

Muslims "stand, bow, prostrate and sit on the floor" during prayer. (Exhibit S-12, p.18) SMA has calculated that, on average, each worshipper uses an 8.75 SF "prayer station" (2.5' x 3.5'). Based on that figure and the available space in the two prayer rooms (excluding the space used by the Imam), SMA has calculated that the two prayer rooms in the masjid could theoretically hold a total of 73 prayer stations. Applying the one space per five seats to the theoretical number of prayer stations possible in the masjid, the required number of parking spaces would be 15 ($73 \div 5 = 14.6 \approx 15$). (Exhibit S-12, p. 18)

The SMA did not stop there, however. It calculated that average vehicle occupancy (AVO) for prayer attendees was 1.76. (See Finding of Fact C9, below.) It then applied the AVO to the theoretical maximum possible prayer stations and concluded that at maximum occupancy, 42 parking spaces would be required ($73 \div 1.76 = 41.48 \approx 41 + 1$ for the Imam = 42). (Exhibit S-12, p. 18)

- B10. The proposed CUP/CSDP site plan depicts 44 off-street parking spaces on the subject property: 42 in a lot in the northeast quarter of the site and two ADA spaces immediately adjacent to the building, accessed via 220th Avenue SE. (Exhibit S-7, Sheet C3.0) The remainder of this Finding will describe the 42-stall lot.

The parking lot will be located 26 feet south of the existing SE 20th Street right-of-way, leaving 20 feet south of the required sidewalk for landscaping. The nearest parking stalls will be 65 feet from the east (Allaire) property line, leaving 20 feet for landscaping and 45 feet for the entrance drive; the westernmost parking stalls will be approximately 200 feet from the Allaire property line. The westernmost stalls will be about 60 feet from the nearest corner of the masjid. The entrance drive will be 30 feet wide with an eight foot wide planter separating the in and out lanes. The driveway will be 20 feet from the Allaire property line (thus 28± feet from the near edge of the Allaire driveway). Parking stalls are all oriented in a north-south direction.⁹ The parking lot and driveway cover approximately 20,400 SF and will be surfaced with pervious pavement. (Exhibits S-7 {Sheet C3.0} and S-19 {Finding 30})

The northwest corner of the Allaire residence will be about 120 – 130 feet east-southeast of the southeast corner of the closest proposed parking stall: Given that the north face of the Allaire residence is about 170 feet south of the SE 20th Street pavement edge and that the south edge of the

⁹ An earlier parking lot design had the stalls oriented east-west with the eastern row of stalls approximately 10 feet from and facing the Allaire property line. (Exhibit S-12, p. 4, Fig. 2)

proposed parking lot is to be 150 feet south of the SE 20th Street pavement edge, the north face of the Allaire residence will be about 20 feet south of an easterly extension of the south edge of the proposed parking lot; given that the most easterly parking stall will be about 65 feet from the common SMA/Allaire property line and that the Allaire residence is about 65 feet on the opposite side of that property line, the Allaire residence will be about 120 – 130 feet east-southeast of the nearest corner of the nearest parking stall. (Exhibit S-7 {Sheet C3.0} and Finding of Fact A.6, above)

- B11. Mary, Queen of Peace Catholic Church has agreed to allow SMA members to use portions of its parking lot “when the facility exceeds the maximum attendance capacity for parking at 44 cars.” (Exhibit S-12, Appendix F)
- B12. To assist in its evaluation of compatibility, the Department determined that the 2.24 acre site could theoretically be subdivided under existing zoning into eight lots for single-family residential development. It then used that as a “baseline” to evaluate compatibility. (Exhibit S-19, p. 7, Analysis/Conclusions §C(1)(C))
- B13. The Department also considered two existing religious uses in the City to assist in its evaluation of compatibility.
- A. The church [*sic*] of Latter Day Saints, located at 922 216th Avenue NE (tax parcel 1240100114) is located on 216th Avenue NE, a collector arterial. The church is located approximately 55 feet from 216th Avenue. The church is located on a property zoned R-6, with a property area of 4.86 acres, and building footprint of approximately 15,000 square feet. Residential development surrounding the church is characterized by a mix of large lot (one acre or greater) single family homes and mid-sized lot (approximately 1/4 acre) single family homes;
 - B. The Good Samaritan Episcopal Church, located at 1757 244th Avenue NE (tax parcel 2725069027) is located on 244th Avenue, a collector arterial. The church is located approximately 200 feet from 244th Avenue NE, and 55 feet from the closest adjoining property. The church is located on a property zoned R-4, with a property area of 4.76 acres, and a building footprint of approximately 13,500 square feet. Residential development surrounding the church is characterized by large lot (on acre or greater) single family homes and institutional development (the City of Sammamish Maintenance & Operations building);

(Exhibit S-19, p. 5, Finding 38) The record contains no evidence that either of the “comparable” churches is subject to any limitations on their hours of operation.

- B14. No religious facilities in Sammamish are located on commercially zoned land. (Maxim testimony)
- B15. The Pine Lake Community Center (Community Center), built in 1950, is located approximately 0.4 miles to the west of the subject site in the southeast quadrant of the 212th Avenue SE/SE 20th Street

intersection. The Community Center has an asphalt and gravel parking lot of approximately 18,000 SF (approximately 0.4 acres) and a building with a footprint of approximately 4,000 SF. The Community Center has two ingress/egress drives onto SE 20th Street. The Community Center has vertical siding and a pitched roof. No landscaping screens the parking lot or building from the right-of-way. The Community Center site includes a baseball field and a playground. The Community Center is used frequently throughout the year; evening activities are apparently required to conclude by midnight. (Exhibit S-19 {Finding 19} and Kahler testimony)

- B16. Children residing in the area attend Creekside Elementary School (Creekside). The school district does not provide school bus service to Creekside from this area since it is located slightly less than one mile to the west of the SMA property. (Allaire testimony)
- B17. SMA provided the Department with its analysis of CUP criteria compliance. (Exhibits S-5(1) {pp. 8 and 9} and S-22) In SMA's opinion, FOSE20's position would essentially mean that any religious facility (or, by extension, any facility) with a parking lot would inherently be incompatible in a residential area. (Exhibit S-5(1), p. 11)
- B18. The Department's decision document includes an expansive analysis of CUP approval criteria and a briefer analysis of CSDP approval criteria. (Exhibit S-19, pp. 6 – 10)
- B19. The CUP/CSDP as issued contains a number of conditions directed at the general subject of compatibility:
4. As conditioned, land use of the site shall be limited to those uses described within the November 4, 2011 letter from VanNess Feldman GordonDerr (Exhibit S-5) and supporting application materials. Expansions or modifications to the use of the site shall require a revision to this conditional use permit.
 12. The landscaped area to the north and to the east of the proposed parking lot shall be bermed such that the berm height is no less than 3 feet above the highest elevation of the parking lot, including periodic maintenance as needed to ensure the berm height is not diminished over time due to erosion or other causes.
 13. Stormwater facility landscaping shall consist of ten feet of Type I landscaping with 100 percent evergreen trees and shrubs. Landscaping to the north and the east of the parking lot shall consist of Type 1 landscaping provided that trees and shrubs shall be evergreen and additional shrubs and trees shall be provided as necessary to ensure that the parking area is fully screened.
 14. A solid wood 6-foot tall fence shall be installed along the south property line between the proposed prayer house building and the adjacent house to the south (tax parcel 0424069277). Five feet of Type 3 [*sic*] landscaping shall be provided

along the fencing. An alternative design may be approved by the city provided that the property owner of the adjacent property (tax parcel 0424069277) and the applicant provide written approval of an alternative design to the city.

15. The proposed site plans propose the use of pervious concrete or asphalt materials to address drainage controls. Pervious materials also serve to reduce expected car noise in the parking lot and are otherwise required.
16. The existing vehicle access on the west side of the subject site shall be limited to ADA parking access and access to the building's existing garage space. Non-ADA parking and pedestrian / congregant drop-offs are prohibited from using the existing access.
17. Occupancy of the site for normal religious activities as described in Exhibit S-12 shall be limited to a maximum of 73 people. Occupancy of the site, for occasional events (approximately once a month) and community gatherings such as a potluck, wedding, or other event, shall not be limited provided parking is managed consistent with condition 18 below.
18. The parking management plan has been approved as part of the Traffic Impact Analysis report prepared by the Transpo Group dated June 2012 and is intended to address parking compatibility. The plan provides for overflow parking at Mary Queen of Peace Church located at 1121 228th Ave SE, Sammamish, WA 98075. The Muslim Prayer House shall provide, and encourage the use of, shuttle service to and from Mary Queen of Peace Church during times when parking needs exceed the capacity of the parking lot at the proposed Muslim Prayer House. The city shall not allow overflow on street parking on SE 20th Street or adjacent local streets. Any changes in the parking management plan shall be reviewed and approved by the City.
19. Prior to building permit issuance, a lighting plan shall be provided for review and approval. Parking lot and pedestrian path lighting is required however all lighting shall be designed to minimize impacts to neighbors and at a minimum shall be fully shielded / fully cutoff such that no uplighting results. The applicant shall provide an analysis of the proposed height of lighting poles compared to the safety needs of the site.

(Exhibit S-19, pp. 11 and 12) "Type I" landscaping creates "a full screen and visual barrier". It "is typically found between residential and nonresidential areas". [SMC 21A.35.030(1)] "Type III" landscaping "functions as a partial visual separator to soften the appearance of parking areas and building elevations. This landscaping is typically found along street frontage ...". [SMC 21A.35.030(3)]

- B20. FOSE20 believes that the CUP/CSDP should be denied. (Exhibits E-1 and F-21) During the closing statement process FOSE20 offered additional conditions which, in the alternative, it believes should be imposed: Limit hours of operation to 7:00 a.m. to 10:00 p.m. weekdays and 8:00 a.m. to 11:00 p.m. on weekends with slightly longer hours allowed during Ramadan; limit occupancy and parking to 15 persons and 8 parking stalls all accessed from 220th Avenue SE as at present, or 36 persons and 20 parking stalls with the lot and driveway at least 125 from the Allaire property line, or the proposed 73 persons and 44 parking stalls with two ingress-egress drives and a 50 foot separation from both side property lines; restrict light poles to 10 feet tall; require a six foot high landscaped berm in the 20 foot landscaped area north and east of the parking lot with plantings at least five feet tall when installed; install a crosswalk; erect a six-foot tall fence along the east and south property lines; and prohibit any future expansion of the masjid. (Exhibit F-20) FOSE20 believes those additional conditions are necessary to ensure compatibility. (Exhibit F-21)

SMA and the Department commented negatively on most of the suggested changes in their closing statements. (Exhibits A-16 and S-37, respectively) SMA stated it would not oppose “the additional condition of a six-foot high fence at the [Allaire] property line without need for a three-foot berm.” (Exhibit A-16, p. 8, ll. 8 & 9) The City proposed a similar additional condition: “construction of a six-foot tall, solid wood fence at the eastern property line ...; said fence to be located as near as possible to the eastern property line, along with the 20 feet of Type 1 [*sic*] landscaping already required by the City. The City proposes that such fence be required in lieu of a three-foot berm along the eastern property line.” (Exhibit S-37, p. 2, ll. 9 – 13)

C. Appeal Issue 3: Traffic Impacts

- C1. Appeal Issue 3 reads in full as follows:

3. Additional Traffic Attributable to the Project and the Location of the Parking Lot Entrance/Exit Will Cause Significant Adverse Impacts.

The decisions fail to address the Project’s substantial adverse impacts to the area. The decisions were based on the erroneous conclusion that the substantial increase in traffic on S.E. 20th Street associated with multiple daily prayer services satisfies community standards, even though traffic measurements were not taken at the times when services are most likely to be attended. The Project will have demonstrably disastrous consequences for traffic flow in a semi-rural neighborhood of single family homes, and put the safety of pedestrians and vehicle occupants at risk. In addition, the location of the parking lot driveway entrance/exit, immediately adjacent to the driveway entrance/exit of the property to the east of the Project property poses danger of vehicle collisions and a safety risk to pedestrians.

(Exhibit E-1, p. 3)

- C2. “Streets and highways are most effectively classified by their function, according to the character of the service they are intended to provide.” [Public Works Standards (PWS).15.050.A, ¶ 1] Section PWS.15.050.A lists a number of City arterials “to assist the developer in determining the classification of a particular street.” [PWS.15.050.A, ¶ 6]

228th Avenue SE is a designated principal arterial. [PWS.15.050.A] 212th Avenue SE and SE 20th Street are both designated collectors.¹⁰

- C3. “Principal arterials provide service for major traffic movements within the City. ... The design year ADT [Average Daily Traffic] is approximately 5,000 to 30,000 vehicles per day or more. ...” [PWS.15.050.B.1]

A “collector”

is a roadway that connects two or more neighborhoods or commercial areas, while also providing a high degree of property access within a localized area. These roadways “collect” traffic from local neighborhoods and carry it to the arterial roadways. Additionally, collectors provide direct access to services and residential areas, local parks, churches and areas with similar uses of the land.

[Comp Plan, p. V-11] Design year ADT [Average Daily Traffic] for a Collector is approximately 2,500 to 15,000. ...” [PWS.15.050.B.3]

- C4. SE 20th Street is a paved, two-lane street between 212th and 228th Avenues SE. A City project which was completed in or around 2011 added a bike lane in each direction and a sidewalk (with curb) on the north side of SE 20th Street. A left-turn lane (LTL) exists on SE 20th Street at its intersections with 212th and 228th Avenues SE. The posted speed limit is 30 mph. (Exhibits F-8 {Photographs} and S-12 {p. 6} and Kahler testimony)
- C5. The current (2012) traffic volume on SE 20th Street is approximately 4,000 ADT. (Chen testimony) During a one week period in March 2011, measured ADT on SE 20th Street ranged from a low of 2,810 on Sunday to a high of 4,267 on Wednesday. The A.M. peak hour¹¹ fell between 7:00 – 10:00 a.m. on weekdays and between 10:00 a.m. – noon on weekends. The A.M. peak hour volumes ranged

¹⁰ During preparation of this decision the Examiner discovered a discrepancy between terminology used in the PWS and terminology used in the Comp Plan. The Comp Plan refers to “Collectors” [Comp Plan, p. V-11] while the PWS refers to “Collector Arterials” [PWS.15.050.B.3]. Thus, a “Collector” is not an arterial under Comp Plan terminology while it is an arterial under PWS terminology. The PWS was adopted by Ordinance O2000-60 in 2000; the Comp Plan was adopted by Ordinance O2003-130 in or around 2003 and has been amended on a number of subsequent occasions through 2008. (Official notice) Where two ordinances addressing the same subject conflict, the most recent prevails. Therefore, the Examiner will rely on the Comp Plan for the classification of Collectors.

¹¹ A.M. peak hour = the single hour between midnight and noon with the highest volume.

from about 200 to 380 vehicles. The P.M. peak hour¹² fell between 1:00 – 4:00 p.m. on the weekend and between 3:00 – 6:00 p.m. on weekdays. The P.M. peak hour volumes ranged from about 300 to 400 vehicles. Early morning weekday volumes (5:00 – 6:00 a.m.) were only about 33% of the A.M. peak hour volume. Weekday volumes during the noon hour (noon to 1:00 p.m.) were generally about 200 vehicles less than during the P.M. peak hour. Weekday volumes during the 8:00 – 9:00 p.m. hour were about 40% of the P.M. peak hour volume. (Exhibit S-36)

- C6. Two reported accidents occurred on SE 20th Street between 212th and 228th Avenues SE in 2008; no accidents were reported on that section of street in 2009 and 2010. (Exhibit S-12, p. 7, Table 3)

At approximately 4:20 p.m. on Friday, May 20, 2011, a multi-vehicle chain reaction collision occurred on SE 20th Street at 220th Avenue SE. A westbound car stopped at 220th Avenue SE waiting for on-coming traffic to clear before turning left into 220th Avenue SE. Three vehicles stopped behind it. A fourth vehicle failed to stop and rear-ended the queue. (Exhibit S-8¹³)

- C7. SMA and FOSE20 each hired professional traffic engineers to assess the traffic impacts of the proposed masjid. SMA's consultant, Transpo Group (Transpo), prepared a full traffic impact study. (Exhibit S-12) FOSE20's consultant, Transportation Solutions, Inc. (TSI), prepared a review of Transpo's work. (Exhibit F-14) Representatives of both consultants testified (McKinney and Markley, respectively). Both consultants generally agree on methodology to be used. The major point of disagreement is that while Transpo focuses on peak hour traffic impacts of typical masjid occupancy, TSI focuses on off-peak traffic impacts at maximum occupancy.
- C8. Traffic engineers use standardized, national trip generation rates from the Institute of Transportation Engineers (ITE) whenever possible to estimate the number of vehicular trips that will be generated by a proposed land use. ITE has no published trip generation rates for mosques. (Exhibit S-12, p. 10)
- C9. The number of vehicular trips associated with a place of worship depends upon the number and temporal distribution of its events, the number of attendees at each event, and the average vehicle occupancy (AVO) rate of the attendees.

To develop average trips per 1,000 SF of prayer area and an AVO figure to use in estimating traffic at the SMA masjid when in full operation, Transpo counted vehicles and vehicle occupancy for Friday Assembly and for daily prayer at three mosques: The SMA masjid¹⁴ and the two Redmond Islamic Centers. (Exhibit S-12, Appendix A)

¹² P.M. peak hour = the single hour between noon and midnight with the highest volume.

¹³ The car in Photograph 1 with the crushed front end must have been one of the cars in the queue, not the lead car for either or both of two reasons: The lead car would not have front-end damage; the location of the car on SE 20th Street is too far east to have been making a left turn into 220th Avenue SE.

¹⁴ The only Friday Assembly counts for the SMA masjid were the two highly attended Fridays when the masjid first opened. (Exhibit S-12, p. 10, Table 4, FN 2)

The overall AVO for Friday Assembly was 1.76; the average number of entering trips per 1,000 SF of prayer area was 53.8. From that, Transpo estimated that Friday Assembly at the SMA masjid, assuming full occupancy of the prayer areas, would generate 38 inbound and 38 outbound vehicles. (Exhibit S-12, pp. 10 and 11)

The overall AVO for daily prayer was 1.4 (morning) and 1.5 (afternoon); the average number of entering trips per 1,000 SF of prayer area was 2.2 in the morning and 3.6 in the afternoon. (Exhibit S-12, p. 11, Table 5)

From the above, Transpo estimated that daily trips on Fridays associated with the SMA masjid would be 102, with three-quarters of them associated with Friday Assembly; the remaining days of the week would be significantly less. (Exhibit S-12, p. 12, Table 6)

- C10. Kahler, a FOSE20 member, counted vehicle trips at the Bellevue Islamic Center on Friday, January 18, 2013. She observed entries and exits for four of the daily prayers. Kahler observed 115 vehicles carrying 144 congregants. The AVO from Kahler’s observations is 1.3 ($144 \div 115 = 1.25 \approx 1.3$). Kahler also observed some congregants park in an adjacent church’s parking lot and walk into the Islamic Center. (Kahler testimony)
- C11. Transpo collected attendance data for one month at the SMA masjid, covering winter and summer periods and weekdays and weekends. Using that data and Transpo’s and Kahler’s AVO figures, the Examiner has calculated trip estimates and required parking spaces for the SMA masjid based on current activity levels.

Event	Weekday			Weekend		
	Attendance	Trips @ SMA AVO ¹⁵ Parking Stalls ¹⁶	Trips @ Kahler AVO ¹⁷ Parking Stalls	Attendance	Trips @ SMA AVO Parking Stalls	Trips @ Kahler AVO Parking Stalls
Winter						
Fajr	4	6 3	7 4	12	17 9	19 10
Dhuhr	0	0	0	8	12 6	13 7
Asr	0	0	0	4	6 3	7 4
Maghrib	0	0	0	5	7 4	8 4
Isha	15	21 11	24 12	15	21 11	24 12
Friday Assembly	50	57 29	77 39	N/A		

¹⁵ SMA AVO = 1.45 except for Friday Assembly which = 1.76. Trips = Number of attendees ÷ AVO x 2. (The “x 2” multiplier accounts for inbound and outbound trips.) All fractional results have been rounded up throughout the table.
¹⁶ Parking stalls required = Trips ÷ 2.
¹⁷ Kahler AVO = 1.3.

Event	Weekday			Weekend		
	Attendance	Trips @ SMA AVO ¹⁵ Parking Stalls ¹⁶	Trips @ Kahler AVO ¹⁷ Parking Stalls	Attendance	Trips @ SMA AVO Parking Stalls	Trips @ Kahler AVO Parking Stalls
After-school	6	9 5	10 5	N/A		
Community Gathering ¹⁸				50	57 29	77 39
Summer						
Fajr	4	6 3	7 4	12	17 9	19 10
Dhuhr	0	0	0	8	12 6	13 7
Asr	0	0	0	4	6 3	7 4
Maghrib	25	35 18	39 20	15	21 11	24 12
Isha	5	7 4	8 4	5	7 4	8 4
Friday Assembly	50	57 29	77 39	N/A		
After school	6	9 5	10 5	N/A		
Community Gathering				50	57 29	77 39

- C12. During the A.M. and P.M. peak traffic hours on SE 20th Street, Transpo calculated that two trips and three trips, respectively, would be generated by the SMA masjid. (Exhibit S-12, p. 11) (It will be remembered that attendance at the early morning and late afternoon prayers is low because those prayers usually fall during or very close to normal working hours.) Transpo rounded those numbers up to 10 trips (five inbound and five outbound) to provide a conservative estimate for calculating A.M. and P.M. peak hour Level of Service (LOS). (Exhibit S-12, p. 11)

LOS is a measure of congestion calculated in accordance with standardized procedures contained in the Transportation Research Board’s Highway Capacity Manual. “LOS values range from LOS A, which indicates good operating conditions with little or no delay, to LOS F, which indicates extreme congestion and long vehicle delays.” (Exhibit S-12, p. 13; see also Exhibit S-12, Appendix C) For unsignalized intersections, “LOS is measured in terms of average delay for the worst minor approach”. (Exhibit S-12, p. 13) LOS is typically calculated for the A.M. and P.M. peak hours of the affected street system. (*Ibid.*)

Transpo calculated the Level of Service (LOS) at the intersection of the SMA masjid driveway with SE 20th Street for the weekday A.M. peak street hour, the weekday P.M. peak street hour, the Friday Assembly hour assuming current attendance volumes, and the Friday Assembly hour assuming maximum theoretical attendance. In each case, the outbound traffic from the site had the greatest delay and, thus, was the intersection leg which determined the LOS result. Three of the four

¹⁸ Approximately one per month. (Exhibit S-12, p. 6, Table 2)

calculated LOSs for outbound vehicles were “B” with a 13 – 15 second delay; the weekday P.M. peak hour LOS for outbound vehicles was “C” with an 18 second delay. In all cases, eastbound traffic on SE 20th Street showed no delay at all. Westbound traffic had less than a 0.5 second delay during morning and evening peak traffic hours and a 1.5 second delay during Friday Assembly. (Exhibit S-12 {p. 13, Table 8} and {Appendix D})

The City’s adopted LOS standard is “C” or “D” depending upon the classification of the street or intersection involved. [Comp Plan, p. V-23] On March 17, 2011, the City Engineer issued a Certificate of [Transportation] Concurrency for SMA’s proposal. The certificate is evidence “that there is adequate vehicular capacity on the City of Sammamish street network”. (Exhibit S-25)

- C13. Using published ITE trip generation rates, Transpo calculated that the average number of trips associated with an eight-lot subdivision would be 76, of which six would occur in the A.M. peak traffic hour and eight would occur in the P.M. peak traffic hour. (Exhibit S-12, p. 12)
- C14. TSI does not challenge Transpo’s calculations. TSI states that “[e]ven if there were higher volumes at other non-peak hour times, we believe the level of service would fall above Sammamish adopted standards.” (Exhibit F-14, p. 2)

TSI takes issue with Transpo’s reliance on current attendance figures. TSI estimates that if average prayer service attendance rose to 50 – 75 percent of the masjid’s theoretical capacity, the number of daily trips would rise to 210 to 310. TSI further argues that the number of trips in the off-peak traffic hours would “be disproportionate when compared to the activity associated with the underlying residential land use and may not be compatible with the surrounding neighborhood.” (Exhibit F-14, p. 3 and Markley testimony)

TSI also argues that use of the overflow parking at Mary, Queen of Peace Catholic Church could actually increase trips: Redirected trips from the on-site parking lot to the overflow lot plus shuttle vehicle trips between the two lots. (Markley testimony)

- C15. Two types of sight distance are used in traffic engineering: Entering sight distance and stopping sight distance. Entering sight distance is the distance required for a vehicle on the side street to safely enter the traffic flow on the major street. Stopping sight distance is the distance required to safely stop when a low object is seen in the street ahead. Both sight distance measures are affected by the speed of the vehicle: The faster the speed, the greater the required sight distance. Whether the required sight distance is available generally depends upon a combination of factors such as vertical and horizontal curves in the road and sight blockages along the sides of the road.

Transpo measured available sight distances for the proposed parking lot driveway location based upon a design speed of 40 mph – a 10 mph cushion above the posted speed limit. The required stopping sight distance for that design speed is 305 feet. The required entering sight distance looking west (left) for an outbound right turn into the eastbound lane is 385 feet; the comparable sight

distance looking east (right) for an outbound left turn into the westbound lane is 445 feet. (Exhibit S-12, p. 17, Table 9)

The available stopping sight distance to the west is greater than 600 feet; the available stopping sight distance to the east is greater than 500 feet. The available entering sight distance for an outbound right turn is greater than 550 feet; the available entering sight distance for an outbound left turn is greater than 600 feet. (Exhibit S-12, p. 17, Table 9)

Both stopping and entering sight distances are comfortably met at the proposed driveway location. (Exhibit S-12, p. 17)

- C16. The City asked SMA to include a turn lane warrant analysis in its traffic impact analysis. (Chen testimony) Transpo used accepted, industry-standard analytical measures to determine whether a LTL or a Right Turn Lane (RTL) were warranted. Transpo made its calculations for the Friday Assembly, the prayer service with the highest attendance. Approximately 280 vehicles travel SE 20th Street during the hour that service occurs. Maximum attendance would generate 42 incoming trips, with 20 expected to arrive from the east and 22 from the west. The maximum volumes did not rise to the level required to meet the warrant for either an LTL or an RTL.¹⁹ (Exhibit S-12, p. 16 and Appendix E)

¹⁹ FOSE20 conducted a "Traffic Experiment" which it contends demonstrates that SMA masjid traffic would badly clog SE 20th Street. (Exhibit F-3) Allaire sent invitations to 48 acquaintances asking each to arrive, by car, at his house at 6:00 p.m. on April 19, 2011. Allaire had three persons present to guide vehicles from his driveway into un-marked parking spaces on the large expanse of lawn between his house and SE 20th Street. (Allaire has used his lawn for that purpose in the past, so he has a plan for stacking visiting cars.) Between approximately 5:50 and 6:05 p.m. 42 vehicles arrived. Allaire had three professional videographers present to record the event. The three videographers shot approximately 30 minutes of video each. That 90 minutes of video was edited into a four (4) minute clip entered into the record as Exhibit F-3. (Allaire testimony)

The Examiner finds the "experiment" as reflected in Exhibit F-3 to be significantly lacking in credibility for numerous reasons. First, it is not an accurate reflection of how the proposed SMA parking lot would function. The parking lot would be graded and surfaced; four rows of marked stalls would be available in two lanes. The FOSE20 experiment stacked vehicles behind one another in an atypical tandem parking arrangement on an un-marked grassy yard. At one point in the video, an inbound vehicle is blocking the mouth of the Allaire drive, apparently receiving parking instructions from one of the helpers standing beside the driver's window. At another point a vehicle is observed slowly traversing a short, sharp grade transition between the drive and the lawn. Stopping at the driveway's mouth for parking instructions and traversing the transition grade obviously slowed down parking.

Second, the video never shows the head of the depicted queue: The shots are always of the queue, but never of the lead vehicle in the queue or the actual turning movements. Therefore, it is not possible from the video to determine why the vehicles were being delayed from entering the Allaire driveway.

Third, at one point in the video, a west bound vehicle is observed passing in the on-coming (eastbound) lane a long line of vehicles stopped in the westbound lane. If the westbound vehicles were prevented from making a left turn into the Allaire driveway because of vehicles coming from the opposite direction, then the passing vehicle would never have been

(Footnote continued on next page.)

- C17. Parking lot driveways must “be designed, located and constructed in accordance with the provisions of the [PWS]”. [SMC 21A.40.110(5)] The PWS contain specifications for driveways. The specifications which apply to a church driveway accessing onto a collector are the General and Width provisions. [PWS.15.170.A and .D] Driveway location restrictions in PWS.15.170.B that apply to arterial accesses do not apply to collectors or local access streets. The maximum driveway width for two-way access drives onto a collector is 30 feet for “commercial” uses. [PWS.15.170.D.1]
- C18. The City Engineer may authorize variations from the PWS subject to certain requirements. [PWS.10.170]
- C19. The City Engineer granted a PWS variation for street frontage improvements: Only a six foot wide sidewalk across the property’s frontage is required. (Exhibit S-13)
- C20. There are no painted crosswalks on SE 20th Street in the vicinity of the SMA property. (McKinney testimony) Crosswalks exist by law on each leg at every intersection of two or more streets, whether marked or not. [RCW 47.04.010(10) and (12)] The SMA volunteered to paint a mid-block crosswalk at a location on its frontage if requested by the City. (McKinney testimony) The City does not support mid-block crosswalks. (Chen testimony)
- C21. The CUP/CSDP as issued contains a number of conditions directed at the general subject of traffic impacts:
6. Prior to issuance of building permits, the applicant shall pay all required traffic impact fees.
 8. All construction and upgrading of public and private roads shall be done in accordance with the City of Sammamish Interim Public Works Standards (PWS).

able to pass the queue in the opposing lane. There obviously were no on-coming vehicles when the passing maneuver was made, thus raising the question: Why were the westbound vehicles queued in the first place?

Fourth, the three source videos have been edited in an unknown manner. Reducing 90 minutes of video into a four minute clip requires leaving substantial footage “on the cutting room floor.” No explanation of what was cut or why has been provided.

Fifth, Exhibit F-3 lacks a timeline. There is no way to tell how the spliced segments relate to one another temporally. There is no way to tell how much of the total experiment is reflected in the clip. Allaire testified that all the vehicles arrived in a single 15 minute period. That being the case, a 15 minute video could have been prepared that accurately depicted the true, time synchronized flow of traffic throughout the entire 15 minutes.

Because of these deficiencies, the Examiner declines to accord any weight to Exhibit F-3.

11. A right of way permit is required for work in the public right-of-way unless work is combined with a site development plan.
29. Frontage improvements along SE 20th Street are required consistent with the approved variation issued by the City Engineer (Exhibit S-13). Frontage improvements shall consist of providing a 6-ft sidewalk on the south side of SE 20th Street.
30. The gravel road on 220th Ave SE shall be maintained to provide continued access to SE 20th Street.
31. City approval of the applicant's final engineering design (issued in the form of a site development permit or building permit) is required prior to initiation of any onsite construction.
33. Prior to obtaining occupancy or temporary occupancy status, 6-ft of frontage along SE 20th Street shall be dedicated to the City of Sammamish for right-of-way.

(Exhibit S-19, pp. 11 and 13)

D. Appeal Issue 4: Noise, Light, and Glare Impacts

D1. Appeal Issue 4 reads in full as follows:

4. Noise, Light and Glare from the Parking Lot Will Cause Significant Adverse Impacts.

The decisions fail to adequately consider the adverse impacts to the adjacent residential area. The construction will create significant noise impact, and, most significantly, upon completion of construction, the site will be effectively operating seven days a week from 5:00 a.m. to midnight. Given the size of the parking lot, impacts will be substantial. Noise from vehicle door lock and unlock fobs, doors opening and closing, and conversations among congregants are certain to adversely impact neighbors. Light and glare from blazing overhead light structures are totally out of character with the existing community and will deprive neighbors of peaceful slumber. The decisions fail to specify the applicable noise and light/glare regulations or to condition the proposed use on appropriate operating hours and/or other noise and light/glare attenuation conditions necessary to adequately buffer these impacts.

(Exhibit E-1, p. 3)

- D2. SMA and FOSE20 each hired professional noise assessment consultants to evaluate the noise impacts of the proposed masjid. FOSE20's consultant, JGL Acoustics, Inc. (JGL), prepared a noise assessment of activities likely to occur in the parking lot based on measurements taken of one vehicle: A 2009 Jeep Grand Cherokee. (Exhibit F-11) SMA's consultant, ENVIRON International Corporation (ENVIRON), prepared a review of JGL's work. ENVIRON also measured the same parking lot activities using four other vehicles: A 2003 VW Jetta, a 2007 Subaru Outback, a 2006 Honda CRV, and a 2006 Nissan Versa. (Exhibit A-7) Representatives of both consultants testified (Lilly and Wallace, respectively). While both generally agree on the noise levels that would be generated by activities associated with the parking lot, they disagree on the proper standard against which to measure impacts and the most reasonable locations from which to measure the source of the noise.
- D3. The principal parties disagreed on the applicable noise standards: FOSE20 argued that King County noise standards apply; SMA and the Department countered that state standards as contained in the Washington Administrative Code (WAC) apply. (Lilly and Wallace testimony and argument of counsel)

FOSE20 argued at hearing that since the King County noise ordinance (Chapter 12.88 King County Code (KCC)) governed the area before incorporation of Sammamish in 1999, and since the City has not enacted its own environmental noise standards, the City intended the King County noise ordinance to still apply. (Exhibit F-11 {p. 5} and Lilly testimony) FOSE20 stated in closing that "As a legal matter, the County Noise Ordinance is not binding on the City, but it is a useful reference point for compatibility analysis." (Exhibit F21, p. 10, ll. 20 – 22)

SMA and the Department argue that since the City has not adopted its own noise standards, the standards contained in Chapter 173-60 WAC apply. (Exhibits A-7 {p. 1}, A-16, and S-37 and Wallace testimony)

The Examiner finds that SMA and the City are correct. Chapter 173-60 WAC establishes noise standards which are applicable statewide. Section 173-60-110 WAC allows counties and cities to enact their own noise standards, provided that if locally enacted standards differ from the Chapter 173-60 WAC state standards, they must be approved by the Department of Ecology. Since Sammamish is an incorporated city and since it has not enacted its own noise standards, the state standards apply. Further, KCC 12.88.020(A) states that its standards apply to "sound sources located within King County or the city of Seattle." Since Seattle is an incorporated city within the outer boundaries of King County, and since Seattle is the only city within the outer boundaries of King County named in KCC 12.88.020(A), the KCC is clearly stating that its provisions do not apply to all cities within King County.

- D4. Chapter 173-60 WAC noise limits depend upon the type of land use (the "EDNA") on both the source and receiving property. Single-family residences are EDNA Class A and churches are EDNA Class B. [WAC 173-60-030(1)(a)(i) and -030(1)(b)(viii), respectively] Other EDNA Class B uses are

educational facilities, recreational facilities, and retail/office uses. [WAC 173-60-030(1)(b)] Noise levels for regulatory purposes are measured at the receiving property's property line. [WAC 173-60-040(1)] The maximum permissible steady-state noise level at a property line between a church and a single-family residence (EDNA Class B source and EDNA Class A receptor) is 57 dBA daytime and 47 dBA nighttime. Those levels may be exceeded by 5 dBA for no more than 15 minutes in any hour, by 10 dBA for no more than five minutes in any hour, and by 15 dBA for no more than 1.5 minutes in any hour. [WAC 173-60-040; see also Exhibit A-7, p. 2] Thus, the maximum permissible noise level at the Allaire property line would be 72 dBA daytime and 62 dBA nighttime for up to 1.5 minutes each hour.

D5. Local jurisdictions are permitted to enact regulations to control nuisance noise. [WAC 173-60-060] Sammamish has enacted a public disturbance noise ordinance. [Chapter 8.15 SMC] The following noises are illegal under Sammamish's code:

(1) Frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property; provided, however, this subsection shall not apply to airplanes and boats;

(2) Frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

(3) Any loud and raucous noise which unreasonably interferes with the use of any business or residential property, school or place of religious worship;

(4) Sound from motor vehicle public address or audio systems, such as, but not limited to, tape players, radios and compact disc players, operated at a volume so as to be audible greater than 75 feet from the source; and

(5) Sound from audio equipment, such as, but not limited to, tape players, radios and compact disc players, whether portable or placed in a fixed location, operated at a volume so as to be audible greater than 75 feet from the source.

[SMC 8.15.020] The above sounds when associated with "regularly scheduled events at parks or stadiums" are not considered public disturbance noises. [*Ibid.*]

D6. JGL and ENVIRON focused their noise analyses on sounds associated with use of the proposed parking lot. Specifically, they measured the sound of a car's panic button horn,²⁰ door lock audible alert, engine start-up, and door closing. They both found that those sounds, most of which are

²⁰ Panic button horns are exempt from Sammamish's public disturbance noise regulation as they are "a warning of danger". [SMC 8.15.020(2), quoted in full above] Therefore, the Examiner will not consider noise from a panic horn further.

impulsive or instantaneous sounds, ranged from 46 to 65 dBA at 100 feet from the source. (Exhibits F-11 {p. 7} and A-7 {p. 3})

- D7. JGL and ENVIRON then calculated the noise levels at the nearest receiving property line, that of the Allaire residence. JGL made its calculations assuming vehicles would park in the stalls nearest to the Allaire residence both day and night; ENVIRON assumed that the few vehicles which would typically come to late night services would park as close to the masjid as possible. Because of those different assumptions, JGL and ENVIRON reached very different conclusions: JGL concluded that the noise levels would be routinely exceeded at the property line; ENVIRON concluded that the noise levels might be exceeded during nighttime, but only for one of the five vehicles measured (the vehicle measured by JGL) and then only if it were parked in one of the stalls closest to the property line.²¹ (Exhibits F-11 {p. 8, Table 2} and A-7 {pp. 3 and 4, Table 3})
- D8. Both JGL and ENVIRON also calculated noise levels at the Allaire residence. (It will be remembered that Chapter 173-60 WAC measures noise levels at the property line, not at the receiving residence.) JGL first measured the background or ambient noise level on the Allaire property. The hourly average (L_{eq}) never exceeded 46 dBA during the test period nor 43 dBA during nighttime hours.²² (Exhibit F-11, p. 6) JGL then calculated the perceived sound level at the Allaire residence of the several vehicle operations in the SMA parking lot (43 dBA to 73 dBA) and compared them to the ambient sound level expressed as the L_{90} statistic²³ (33 dBA to 36 dBA).
- ENVIRON takes exception to comparing maximum noise levels with the L_{90} statistic. (Exhibit A-7, p. 4, FN 2) Based upon its assumptions, ENVIRON calculated that the early morning hourly L_{eq} at the Allaire residence would increase by 1 – 2 dBA due to noise from the parking lot, a slight increase.²⁴ (Exhibit A-7, p. 5)
- D9. Noise barriers must be solid and higher than either the source or the receiver to be effective. The most effective location for a noise barrier is immediately adjacent to the source or immediately adjacent to the receiver. The least effective location for a noise barrier is mid-way between source and receiver. Vegetation is a poor sound barrier: It may provide psychological noise reduction (If you can't see the source, you may be less bothered by its noise.), but it does little to actually reduce sound levels. (Wallace testimony)

²¹ It is worth noting that the maximum permissible noise level in a solidly residential neighborhood after 10:00 p.m. is 60 dBA (45 dBA + 15 dBA). To the extent that the sound level of a car door closing or the door lock audible alert are greater than 60 dBA at distances of 65 – 100 feet from a property line, no one could legally close their car door or remotely lock it after 10:00 p.m. if their driveway was less than 100 feet from their property line. (Exhibit A-7 {p. 3, Table 2} and F-11 {p. 8, Table 2}) The unreality of such a position is obvious.

²² ENVIRON believes that the 24-hour average (L_{dn}) would be a better measure of ambient noise. (Exhibit A-7, p. 4)

²³ L_{90} is the sound level that is exceeded 90% of the time period measured. (Exhibit F-11, p. 4)

²⁴ A 1 dBA increase “is generally too small to be detected In general, it takes a 3 dBA change to be noticed by the casual listener, unless the ‘character’ or ‘quality’ of the sound is changed significantly.” (Exhibit F-11, p. 4)

D10. Lighting of on-site parking lots is required for safety unless waived by the Department Director. When required, “[i]t shall be designed to minimize direct illumination of abutting properties and adjacent streets.” [SMC 21A.40.110(7)]

D11. SMA has submitted no plans for parking lot security lighting.

D12. The CUP/CSDP as issued contains one condition directed at the general subject of light impact:

19. Prior to building permit issuance, a lighting plan shall be provided for review and approval. Parking lot and pedestrian path lighting is required however all lighting shall be designed to minimize impacts to neighbors and at a minimum shall be fully shielded / fully cutoff such that no uplighting results. The applicant shall provide an analysis of the proposed height of lighting poles compared to the safety needs of the site.

(Exhibit S-19, p. 12)

D13. In its closing statement SMA indicated that it “will accept an additional condition limiting light poles to ten feet, provided the City agrees that the height is adequate to address pedestrian and vehicular safety.” (Exhibit A-16, p. 7, FN 12) The City supported that additional condition in its closing statement. (Exhibit S-37, p. 10, ll. 7 & 8)

D14. SMA and the Department believe that conditions restricting hours of operation would violate SMA’s constitutional rights. (Exhibits S-5, S-37, A-14, and A-16)

LEGAL FRAMEWORK²⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

CUPs, CSDPs, and SEPA threshold determinations are all Type 2 land use processes. [SMC 20.05.020, Exhibit A] An appeal from the Department’s action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

²⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

The review criteria for a Type 2 CUP are set forth at SMC 21A.110.040:

A conditional use permit shall be granted by the City, only if the applicant demonstrates that:

- (1) The conditional use is designed in a manner that is compatible with the character and appearance of an existing or proposed development in the vicinity of the subject property;
- (2) The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
- (3) The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
- (4) Requested modifications to standards are limited to those that will mitigate impacts in a manner equal to or greater than the standards of this title;
- (5) The conditional use is not in conflict with the health and safety of the community;
- (6) The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood; and
- (7) The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities.

The review criteria for a Type 2 CSDP are set forth at SMC 21A.95.050:

(1) The director may approve, deny, or approve with conditions an application for a commercial site development. The decision shall be based on the following factors:

(a) Conformity with adopted City and state rules and regulations in effect on the date the complete application was filed, including but not limited to those listed in SMC 21A.95.040.

(b) Consideration of the recommendations or comments of interested parties and those agencies or departments having pertinent expertise or jurisdiction, consistent with the requirements of this title.

The regulations “listed in SMC 21A.95.040” are the following:

... Chapter 43.21C RCW, SEPA, as implemented by Chapter 197-11 WAC; Chapter 9.04 KCC as adopted by Chapter 15.05 SMC, Surface Water Management; Chapter 14.01 SMC, Public Works Standards Adopted; Chapter 16.15 SMC, Clearing and Grading; Chapter 16.05 SMC, Building Codes and Fire Code; Chapter 20.15 SMC, State Environmental Policy Act Procedures; SMC Title 21A, Development Code; SMC Title 25, Shoreline Management; administrative rules adopted pursuant to Chapter 2.55 SMC to implement any such code or ordinance provision; King County board of health rules and regulations; and City approved utility comprehensive plans.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, the CUP and CSDP applications are vested to the development regulations as they existed on March 11, 2011.

Standard of Review

The standard of review in CUP and CSDP appeals is preponderance of the evidence. The appellant has the burden of proof. [Hearing Examiner Rule of Procedure (RoP) 316(a)]

The clearly erroneous standard is the appropriate test to apply in an appeal of a SEPA threshold determination: the action of the responsible official is not disturbed unless, after reviewing all the evidence in the record, the appellate decision maker is left with the definite conviction that a mistake has been made. [*Leavitt v. Jefferson Cy.*, 74 Wn. App. 668, 680 (1994)]

The appellant also has the burden of proof in a SEPA appeal. State law requires that “[i]n any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a ‘detailed statement’, the decision of the governmental agency shall be accorded substantial weight.” [RCW 43.21C.090; see also RCW 43.21C.075(3)(d)] That requirement is echoed both in state rule and in the SMC. [WAC 197-11-680(3)(a)(viii) and SMC 20.15.130(1)(b), respectively]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

A. General

A1. The preponderance of the evidence shows that FOSE20 has failed to meet its burden.

FOSE20’s appeal has led SMA and the Department to suggest alternative fencing and lighting conditions. The Examiner concludes that those suggestions, with minor changes, would equally or better serve the public health, safety, and welfare than existing permit conditions and should be imposed as conditions on the CUP/CSDP.

A2. To the extent that FOSE20’s appeal characterizes the proposal as a “commercial parking lot,” it is wrong. The proposal seeks approval to use an existing building, built as a single-family residence, as a masjid. The change of use requires that off-street parking be provided on site. Construction of the required off-street parking necessitates construction of stormwater control facilities. The parking lot and stormwater facilities are accessory to the masjid, they are not the fundamental use of the site.

A3. FOSE20 essentially abandoned the CSDP portion of its appeal: The appeal does not overtly or specifically challenge compliance with any specific CSDP approval criteria. The testimony and evidence introduced at hearing did not overtly or specifically challenge compliance with any specific CSDP approval criteria. FOSE20’s closing statement does not address the CSDP.

The Examiner might be inclined to summarily dismiss the CSDP portion of the appeal but for the fact that the codes cited as CSDP approval criteria overlap to some extent with CUP approval issues. Discussion of the CUP issues will fulfill any obligation to discuss the CSDP appeal. A conclusion on a CUP issue will suffice as the required conclusion on the corollary CSDP topic.

- A4. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.
- A5. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

B. Appeal Issue 3: Traffic Impacts

- B1. Both SEPA and CUP/CSDP analysis of expected traffic impacts must be based upon realistic, probable conditions rather than hypothetical situations that are remote and speculative. FOSE20 has presented no evidence or persuasive argument to counter the testimony and evidence from SMA regarding attendance patterns at its masjid. The facts simply are that early morning, mid-day (except for Friday), and late evening prayer services are sparsely attended for a variety of reasons. (The Islamic Centers used, among other purposes, to determine AVO are located in commercial areas. A commercial area location would well be expected to have a higher attendance during work-day prayer times because of the proximity to places of employment.)
- B2. The preponderance of the evidence demonstrates that masjid-related vehicular trips during the peak hours of the area's street system will be very minimal. Peak masjid traffic will be around the noon hour on Fridays, a time period when area street traffic is not at its peak.
- B3. The preponderance of the evidence demonstrates that masjid-related traffic during very early morning hours and very late evening hours will also be quite low.
- B4. The preponderance of the evidence demonstrates that masjid-related traffic will not violate the City's adopted LOS standard.
- B5. FOSE20 suggests that a detailed "traffic management program" should be required because "[n]either the City's traffic witnesses nor the Applicant's expert witness persuasively testified that such a program would not benefit the community." (Exhibit F-17, p. 4, l. 22 continuing on to the next page) That is not the proper analytical approach: The Appellant must prove that the City erred; the City does not have to prove that an Appellant's suggestion lacks merit.
- B6. Even if masjid-related traffic rose to the levels hypothesized by FOSE20's traffic consultant, the volumes would not cause an LOS failure (both traffic consultants agree on this point) nor would they be so high as to create an incompatibility. SE 20th Street is a designated Collector presently carrying some 4,000 vehicles a day. Its design capacity is more than double its present volume. The masjid's traffic would be but a proverbial "drop in the bucket." Further, all evidence indicates that it is highly unlikely that late evening and early morning services would ever be heavily attended. The notion that 44 vehicles would be coming in and out of the parking lot five times a day is simply not supported by the evidence.

- B7. FOSE20's appeal argues that the proposed masjid parking lot driveway "poses danger of vehicle collisions and a safety risk to pedestrians." (Exhibit E-1, p. 3, Appeal Issue 3) Given the available sight distance and the condition of SE 20th Street, the Examiner concludes that that allegation lacks substantial merit.
- B8. The single rear-end accident in May, 2011 on SE 20th Street does not in any way prove that the masjid would create unacceptable traffic conditions. In the first place, the evidence does not indicate that the lead vehicle's driver was a Muslim heading to the masjid for a prayer service. It may have been; it may not have been. The driver of the lead vehicle could have been a member of the Hall family returning home. None of the evidence in the record of this hearing indicates that the stretch of SE 20th Street in the vicinity of the proposed masjid is unsafe in any way: It is straight, it has bike lanes on both sides, it has a sidewalk on the north side, and it has sight distances to both the east and the west which exceed the minimums required for the posted speed limit. That one driver failed to pay attention to the road ahead does not make turning movements inherently unsafe.
- C. Appeal Issue 4: Noise, Light, and Glare Impacts
- C1. The only noise that has been stated to be a concern to FOSE20 is that associated with normal activities in any parking lot: Car doors closing, door lock alerts beeping, and car engines starting. Those noises would be associated with any and every use required to have an off-street parking lot.
- C2. The credible evidence does not support a conclusion that parking lot noises would exceed established standards. In addition to using the wrong noise standard, FOSE20's consultant made the unrealistic assumption that worshipers attending the late night-early morning services, those with the least attendance, would park closest to the Allaire property rather than closest to the masjid.
- C3. The King County Noise Ordinance standards are not applicable within the corporate limits of Sammamish. Therefore, they are not "a useful reference point for compatibility analysis." (Exhibit F-17, p. 10, ll. 20 – 22) If they are not applicable, then they simply are not relevant for any part of the required analysis. It is the City's adopted standards and criteria against which applications for City permits must be evaluated.²⁶
- C4. SMA and the Department have presented a reasonable start for consideration of different light and noise buffering of the Allaire property. Given the Wallace testimony on the optimal location for noise barriers (which comports with all previous testimony in other cases received by this Examiner from noise consultants), the fence would be more useful if it were closer to the source of the vehicle

²⁶ One paragraph about noise in FOSE20's closing statement appears to suffer from a scrivener's error. The statement "a permitted subdivision use would be Class B EDNA ('lands where human beings reside and sleep')" is incorrect: Residential uses are Class A EDNAs, not Class B EDNAs. Institutional uses, like the proposed masjid, are among the Class B EDNA uses.

noises than if it were on the property line as proposed, essentially mid-way between the source and the receptor. This topic will be addressed further in Conclusion of Law F2.A, below.

- C5. The Examiner agrees in part with FOSE20 that information regarding site lighting is sparse to nonexistent in the record, although the Examiner would not go so far as to characterize its absence as a “fatal omission.” (Exhibit F-17, p. 7, l. 4)

Whatever evidentiary shortcomings exist have been cured by two facts. First, the SMC mandates that parking lot lighting “shall be designed to minimize direct illumination of abutting properties and adjacent streets.” [SMC 21A.40.110(7)] That code standard applies regardless of whether it is recited as a special condition of CUP/CSDP approval. The conditions as imposed take this requirement one step further: Condition 19 requires that lighting “shall be fully shielded / fully cutoff such that no uplighting results.” (Exhibit S-19, p. 12, Condition 19)

Second, SMA has now offered and the Department has accepted an additional requirement: That all light standards be limited to a height of 10 feet above grade.

The Examiner concludes that whatever light impact concerns may have existed have now been adequately mitigated.

D. Appeal Issue 2: Compatibility

- D1. Compatibility does not mean or require sameness. *Webster’s Encyclopedic Unabridged Dictionary of the English Language*, 1989 Ed., defines “compatible” as “**1.** capable of existing together in harmony: *the most compatible married couple I know.* **2.** able to exist together with something else: *Prejudice is not compatible with true religion.*” [Bold and italics in original]

Two things do not have to be the same to be compatible. A cursory review of the list of uses conditionally permitted in the R-4 zone demonstrates this principle: Libraries, museums, funeral homes, daycare centers, churches, hospitals, public utility yards, and fire stations simply are not (and never will be) the same as single-family residences.

- D2. The Examiner declines to use the Department’s “8-lot subdivision” alternative use as a benchmark in determining compatibility. The question is not whether a proposed conditional use would have impacts comparable to those that might be expected from a single-family subdivision occupying the proposed conditional use’s site.

The SMC contains two “compatibility” tests: Whether the proposed conditional use will be “compatible with the character and appearance of an existing or proposed development in the vicinity of the subject property;” and whether the proposed conditional use will be “compatible with the physical characteristics of the subject property”. [SMC 21A.110.040(1) and (3)]

The former test requires consideration of not only existing uses in the vicinity, but also of those uses allowed by applicable zoning which could be developed on properties in the surrounding area.

The latter test requires consideration of the extent of physical alteration of the site required to accommodate the proposed conditional use.

FOSE20's appeal addresses the former, not the latter "compatibility" test. Since the property exhibits no significant physical constraints, since only a parking lot and its associated stormwater control facilities will be built, and since construction of neither will necessitate extensive site alterations, the proposal meets the second "compatibility" test – the one not challenged by FOSE20.

- D3. FOSE20 invites the Examiner to be guided by review criteria for "home businesses" as set forth in SMC 21A.65.050 in determining compatibility between the SMA's proposed religious facility and the surrounding neighborhood. (Exhibit F-21, pp. 1 and 2) The Examiner declines to do so.

Subsection 21A.65.050(2) SMC, "Compatibility Required," sets forth items to be considered "[i]n addition to other required standards" when evaluating a home business application. The criteria in that subsection, therefore, are intended to be in addition to standard CUP criteria and are unique to home businesses, not reflective of general CUP compatibility analysis topics.

The time limitation contained in SMC 21A.65.050(4)(h) (8:00 a.m. to 9:00 p.m.) simply is unworkable for many of the conditionally listed uses in the R-4 zone: Hospitals do not shut down at 9:00 p.m.; conference centers could well be expected to have sessions that lasted beyond 9:00 p.m. In addition, public schools, which it will be remembered are permitted outright in the R-4 zone, may start classes before 8:00 a.m. and may have functions which last beyond 9:00 p.m. Finally, every church of which this Examiner is personally aware has services which from time to time last beyond 9:00 p.m. – and some start before 8:00 a.m. The 8:00 a.m. to 9:00 p.m. limitation for home businesses clearly was not intended to represent a proper measure of compatibility for other conditional uses. In fact, the wording and structure of SMC 21A.65.050(4) suggest that the items listed in subsection (4) are threshold criteria for determining whether a proposal can qualify as a home business, not as decision making criteria for determining compatibility.

- D4. FOSE20's argument that a parking lot for the masjid is inherently incompatible with a residential area must fail. The Sammamish zoning code allows elementary schools, middle schools, high schools, museums, court and police facilities, etc. as permitted uses in all residential zones. Each of those uses is required to have off-street parking. Thus, each of those permitted uses is required under the zoning code to have a parking lot. By making such uses permitted as a matter of right and requiring that such uses provide an off-street parking lot, the City's legislative authorities have adopted a policy which holds that such parking lots are inherently compatible with permitted uses in residential zones.

Further, all conditional uses in the residential zones are likewise required to provide off-street parking facilities. If FOSE20's view held, then no church (of any denomination) could ever gain CUP approval as its required parking lot would be inherently incompatible with the surrounding residential area. That view is simply not supported by the adopted code and is logically unsupportable.

- D5. The opinions of FOSE20's land use consultant are not persuasive. (See summary at Exhibit F-17, pp. 3 and 4.) Imposing hours of operation limits on churches is not something that this Examiner (in service as a Hearing Examiner for about a dozen municipal corporations over the past 34 years) has ever done. The record contains no evidence that any church in Sammamish has a CUP which limits its hours of operation. Limiting this church's hours of operation would be unprecedented.

The consultant's "neighborhood character" argument is relevant only if one accepts the notion that approving this particular religious facility would somehow harm the neighborhood character in a way that approval of other churches/synagogues would not. Yes, the Comp Plan does encourage "maintenance of neighborhood character," but it also recognizes the benefit of allowing religious and other facilities in residential neighborhoods. (See Findings of Fact B4 – B7, above.)

The Examiner has already addressed and discarded the suggestion that home business criteria be applied in the review of this religious facility CUP.

Traffic and lighting have been addressed in preceding sections of this Decision.

- D6. The subject property and the surrounding area are not rural. The evidence shows that the vast majority of lots in the surrounding area are typically-sized city lots. The Hall, SMA, Allaire, and Frog Pond Farm parcels are really the only "large" tracts in the area. The area is zoned R-4, a zoning which essentially allows ¼ acre lots. Some long-time area residents may wish they were not in a city with city zoning, but wishing does not make it real.
- D7. The CUP/CSDP as conditioned requires denser landscaping north and east of the parking lot than is minimally required by the SMC. The permit requires Type I landscaping whereas the code would only require Type II. The Department has thus provided the neighbors a heightened landscape screen. In addition, the driveway is further from the Allaire property line than minimally required by code. Both of those facts provide an increased level of compatibility above and beyond what code would require.
- D8. The Department performed a very detailed analysis of compatibility before granting the CUP/CSDP. (Exhibit S-19) That analysis is persuasive.

E. SEPA DNS

- E1. SEPA is generally described as having two separate aspects: The procedural and the substantive. The process which led to issuance of the challenged DNS was the former.

- E.2 The procedural aspect of SEPA requires that a determination be made as to whether a project would result in “a probable significant, adverse environmental impact” and requires that a “detailed statement” be prepared in conjunction with “major actions significantly affecting the quality of the environment”. [RCW 43.21C.031 and RCW 43.21C.030(c), respectively] The process of determining whether a project would result in such an impact is referred to as the “threshold determination” process. The person making the determination is called the “responsible official”.
- E.3 The State rules define “probable” as something which is “likely or reasonably likely to occur” as opposed to events “that merely have a possibility of occurring, but are remote or speculative.” [WAC 197-11-782] The term “significant” “as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.” [WAC 197-11-794, both definitions adopted by reference at SMC 20.15.010(1)]
- E.4 Section 197-11-330 WAC (adopted by reference at SMC 20.15.040(1)) provides general guidelines to be used in making a threshold determination. The guidelines call for the responsible official to place the probable impacts in the context of their surroundings and make a reasoned judgment as to both the probability of their occurrence and the severity of their impact should they occur. The responsible official must also “[c]onsider mitigation measures which an agency or the applicant will implement as part of the proposal.” [WAC 197-11-330(l)(c)]
- E5. As noted in the Legal Framework Standard of review, section above, state law requires that “the decision of the governmental agency shall be accorded substantial weight.” Thus, unless the Examiner concludes that the Department’s issuance of a DNS for the proposal was clearly erroneous, after according substantial weight to the Department’s analysis, the SEPA appeal must be denied.
- E6. From all of the evidence and testimony in the record, and from all of the Conclusions in preceding sections of this Decision, it must be concluded that the Department did not err in issuing a DNS for the SMA masjid proposal. There simply is no evidence of a probable, significant adverse environmental impact associated with the proposal.

F. CUP/CSDP Conditions

- F1. FOSE20 suggested seven additional permit conditions: (Exhibit F-20)
- A. Hours of Operation. This subject has been addressed previously. Limiting hours of operation of a religious facility would be unprecedented.
- B. Occupancy Limits and Parking. The Examiner knows of no church whose occupancy has been limited to its current membership level. Occupancy limits are set by building code considerations; off-street parking requirements are based upon zoning regulations which, in turn, are based on calculated maximum occupancy.

- C. Lighting. SMA and the Department have accepted FOSE20's suggestion to limit light poles to 10 feet in height.
- D. Screening and Landscaping. Essentially, FOSE20's suggestion is to increase the height of the berm required by the Department-issued CUP/CSDP from three to six feet, to require that plantings on the berm be at least five feet high at planting, and to require that SMA replace any plants which die.

The SMC requires that landscape berms "shall not exceed a slope of two horizontal feet to one vertical foot (2:1)." [SMC 21A.35.070(1)] Based on that minimum standard, a six foot high berm would be at least 24 feet wide (12 feet from one edge to the center crown and 12 feet back down the other side). A 24 foot wide berm doesn't work. In addition, it would create a 12 foot wide slope directing sheet flow stormwater runoff directly onto the Allaire property. The suggested additional berm height is neither workable nor desirable.

The offered six-foot fence achieves the same result without creating drainage problems.

The SMC requires that all landscape trees be at least five feet tall at planting. [SMC 21A.35.080(2) and (3)] The planting height part of FOSE20's suggestion is thus moot as it is already required by code.

The SMC requires the property owner to replace any landscape plants which die. [SMC 21A.35.110(3)] (Other subsections of SMC 21A.35.110 require that the property owner water, prune, and keep clean landscape areas.) The plant replacement part of FOSE20's suggestion is thus moot as it is already required by code.

- E. Traffic. FOSE20 wants a crosswalk striped across SE 20th Street somewhere on the property's frontage and a detailed "transportation management plan" prepared.

As to the crosswalk, no evidence exists that any masjid attendee would need to cross SE 20th Street as a pedestrian. A crosswalk requirement thus cannot be justified based upon need of masjid worshipers. The crosswalk would have to be justified on the basis that the masjid traffic exacerbated an existing problem experienced by pedestrians in the area. From the testimony, it seems that FOSE20's biggest concern is for the safety of neighborhood school children crossing from the south side to the north side of SE 20th Street on their way to Creekside Elementary School. Safety of school children is without question a legitimate concern and interest of the City. But the question is: Will traffic associated with the masjid exacerbate whatever the crossing condition is now? The answer, based upon the evidence, seems to be: Only infinitesimally, if at all. The early morning prayer services, held at least part of the year at about the same time school children might be expected to be walking to school, is only sparsely attended. Masjid-related traffic is but a tiny fraction of total traffic on

SE 20th Street at that time. The same holds for mid-afternoon when school children would likely be returning home. Masjid traffic will not materially affect pedestrian crossings.

Further, Public Works does not want a mid-block crosswalk in any event, believing that it creates a false sense of security.

As to a “transportation management plan,” the evidence simply does not support the need for the detailed document suggested by FOSE20.

- F. Fencing. FOSE20 wants the entire eastern and southern property lines fenced with a solid six-foot tall fence. No justification for such a requirement exists in the record. The Examiner has already concluded that a six-foot tall solid fence is needed along the east edge of the parking lot to serve as a noise barrier protecting the Allaire residence. No need exists to place that fence on the property line (in fact it will be more effective if it is closer to the parking lot) nor to extend it all the way to the southeast corner of the site as there is no proximate noise receptor in that area to be protected. The proposal includes a six-foot solid fence between the Hall residence and the masjid; there is no reason to extend that fence all the way to the southeast corner of the site as there is no proximate noise receptor in that area to be protected. In addition, the distance between the Hall residence and the nearest corner of the parking lot will be over 200 feet. Based on the evidence in the record, noise levels from automobile actions in the parking lot will be within established limits at that distance.
- G. No Expansion. FOSE20 wants the City to require SMA to execute a restrictive covenant barring any expansion of the masjid for all time. Such a requirement would truly be unprecedented. It is easy to imagine that individual FOSE20 members would have rebelled in righteous indignation had the City ordered them to execute a “no expansion ever” covenant as a prerequisite to obtaining a City permit to build their residence or place of business. The SMC contains processes and limitations on expansion of activities subject to CUPs and CSDPs. [SMC 21A.100.150 and 21A.95.080, respectively] But more to the point, Condition 4 goes beyond the code to require “a revision to this conditional use permit” for any and all expansions or modifications. (Exhibit S-19, p. 11) Those processes and limitations adequately address the subject of potential future expansion.
- F2. Based upon the preponderance of the evidence in the record and the preceding Conclusions of Law, the Examiner concludes that two of the 34 CUP/CSDP conditions need to be revised:
- A. Condition 12. Condition 12 requires a three-foot high berm within the 20 foot wide landscaped area both north and east of the parking lot. As discussed above, a solid six-foot tall fence along the eastern edge of the parking lot, extending southerly sufficiently far to block line-of-sight noise transmission from the parking lot to the Allaire residence, with landscaping between that fence and the common property line would be preferable to the required three-foot berm. The following revisions to Condition 12 will address this point:

- A. The landscaped area to the north of the proposed parking lot shall be bermed such that the berm height is no less than 3 feet above the highest elevation of the parking lot, including periodic maintenance as needed to ensure the berm height is not diminished over time due to erosion or other causes.
 - B. A solid six-foot tall fence shall be installed along the east edge of the parking lot access driveway, roughly 20 feet from and roughly parallel with the east property line, beginning 20 feet south of the edge of the SE 20th Street right-of-way and extending southerly to at least that point where a line drawn from the southwest corner of the parking lot to the southwest corner of the neighboring Allaire residence crosses the fence line, a distance of approximately 175 feet. The fence may extend further south at the permittee's discretion. As an alternative to the southward extension of the fence beyond the south line of the parking lot, the permittee may erect a solid six-foot tall fence along the south edge of the sidewalk adjoining the south edge of the parking lot from a point on line with the west edge of the parking lot easterly to intersect the north-south fence. The grade where the fence is erected shall be equal to, higher than, or not more than one foot below the grade of the adjacent parking lot surface.
- B. Condition 19. Condition 19 is the lighting condition. The suggested and accepted 10 foot light pole limit needs to be added to this condition. The following revisions to Condition 19 will address this point:

Prior to building permit issuance, a lighting plan shall be provided for review and approval. Parking lot and pedestrian path lighting is required. However, all poles holding lighting fixtures shall not exceed ten (10) feet in height. All lighting shall be designed to minimize impacts to neighbors and at a minimum shall be fully shielded/fully cutoff such that no uplighting results.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner:

- A. **DENIES** the appeal of FOSE20 from the State Environmental Policy Act Determination of Nonsignificance.
- B. **GRANTS IN PART** the appeal of FOSE20 from the Conditional Use Permit/Commercial Site Development Permit; to wit: Permit Conditions 12 and 19 are revised to read as set forth in Conclusion of Law F2, above.

Decision issued March 18, 2013.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ²⁷

Mark Davidson, unsworn counsel
Tadas Kisielius, unsworn counsel
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Jerry Lilly
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Evan Maxim
Wassim Fayed
Kristen Wallace

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for

²⁷ The official Parties of Record register is maintained by the City's Hearing Clerk.

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reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision, nor does filing a request for reconsideration stay the time limit for commencing judicial review. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”
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