

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by  
  
SAVE MADISON VALLEY  
  
of Decisions Re Land Use Application,  
Design Review, and Code Interpretation  
for 2925 East Madison Street, Projects  
3020338 and 3028345

NOTICE OF APPEAL

**I. INTRODUCTION**

The single family home neighborhood of Madison Valley is currently bordered by a steep, forested slope that rises from Dewey Place East up to East Madison Street. A healthy forest of old trees extends on the slope for several blocks along the quiet, narrow, pedestrian-traveled Dewey Place East. This creates a very quiet, very beautiful, and very green aesthetic that everyone in the neighborhood enjoys and values immensely. The forested slope also provides a critical transition between the single family zone in Madison Valley and the higher density zone upslope on East Madison Street.

Velmeir Companies is now proposing to remove the slope entirely, remove the forest entirely, and build in its place a massive, high-density structure with 82 residential units and retail space. This new building will cover practically every square inch of the currently forested, natural area and will tower over the single family homes in Madison Valley. There is no transition from the single family zone to the commercial zone.

Velmeir used the presence of the slope to its advantage to get extra height and then, ironically, proposed to remove the slope completely. Velmier argued for and received a complete waiver of all steep slope and liquefaction protections in the code. Velmier also argued for and received a green light to remove every single tree on site, including exceptional trees. Velmeir didn't even try to minimize the impacts of its development and SDCI didn't even ask them to.

1 All of this was done in violation of the Seattle Code. To the extent that project is consistent with the  
2 code, this is largely because there are loopholes in the language of certain provisions that have  
3 allowed unintended results that are clearly inconsistent with the intent of the code and with the goals  
4 of the Comprehensive Plan. These unintended results will cause significant adverse environmental  
impacts. The code exemptions and waivers that SDCI granted to the developer have allowed a  
proposal that will have significant impacts that must be disclosed and mitigated under SEPA.

5 **II. APPELLANT INFORMATION**

6 **1. Appellant:**

7 Name: Save Madison Valley  
8 Address: 2811 E Madison St, Ste. 205D, Seattle WA 98112.  
9 Phone: (206) 353-7116  
Email: melissastoker1@gmail.com

10 In what format do you wish to receive documents from the Office of Hearing Examiner?

11 Check One:  U.S. Mail  Fax  Email Attachment

12 **2. Authorized Representative:**

13 Name Claudia M. Newman, Bricklin & Newman, LLP  
14 Address 1424 Fourth Avenue, Suite 500, Seattle, WA 98101  
15 Phone: (206) 264-8600  
16 Fax: (206) 264-9300  
Email: newman@bnd-law.com; cahill@bnd-law.com; miller@bnd-law.com

17 In what format do you wish to receive documents from the Office of Hearing Examiner?

18 Check One:  U.S. Mail  Fax  Email Attachment

19 **III. DECISIONS BEING APPEALED**

20 **1.** Save Madison Valley is appealing the decisions made in the July 23, 2018 Analysis and  
21 Decision of the Director of the Seattle Department of Construction and Inspections regarding  
22 the Land Use Application submitted by Chris Davidson of Studio Meng Strazzara, Record  
23 Number 3020338. Save Madison Valley is also appealing the July 23, 2018 Land Use Code  
24 Interpretation, SDCI Project No. 3028345, related to MUP Project 3020338. SMV is also  
appealing the Final Recommendation of the Downtown Design Review Board for the same  
proposal. Copies of all three decisions are attached.

25 **2. Property address of decisions being appealed:** 2925 East Madison Street., Seattle,  
26 Washington.



- 1 1. The Decision by the Director of SDCI to issue a Determination of Non-Significance (DNS)  
2 was made in violation of the State Environmental Policy Act (SEPA), ch. 43.21A, and state  
3 and local regulations implementing that law for the reasons described above and for  
4 following reasons:
- 5 a. The Director did not require or collect the necessary and adequate information upon  
6 which to make a determination on whether the East Madison Street Proposal would  
7 have significant adverse impacts related to steep slopes, surface water, groundwater,  
8 sewer and waste water, flooding, trees, wildlife habitat, land use, aesthetics  
9 (including height, bulk, and scale), public safety, traffic and transportation,  
10 construction, and public infrastructure/utilities. The information provided in the  
11 environmental checklist and the supplemental information relied upon by the  
12 responsible official to issue a DNS was inadequate, misleading, incomplete, and  
13 incorrect. The comments letters, request for interpretation, and oral testimony  
14 submitted on behalf of SMV and its members provide details on these topics.
- 15 b. The East Madison Street Proposal will have probable significant adverse impacts  
16 related to steep slopes, surface water, groundwater, sewer and waste water, flooding,  
17 trees, wildlife habitat, land use, aesthetics (including height, bulk, and scale), public  
18 safety, traffic and transportation, construction, parking, noise, and public  
19 infrastructure/utilities. The Director erred in concluding otherwise. These impacts  
20 were not adequately disclosed, analyzed, or mitigated by SDCI. The lack of analysis  
21 of the impacts of the tree removal is particularly alarming. The City's regulations do  
22 not adequately address or mitigate the environmental impacts of this Proposal. The  
23 Director erred in concluding that no further mitigation was warranted for the  
24 significant impacts that will be caused by the Proposal. The comments letters,  
25 request for interpretation, and oral testimony submitted on behalf of SMV and its  
26 members provide details on these topics.
- c. The Director erred in concluding that the Design Review Process resulted in  
sufficient review and mitigation of the height, bulk, and scale impacts of the  
proposal. The height, bulk, and scale of the proposal will cause significant adverse  
aesthetic and land use impacts. The design guidelines do not adequately address or  
mitigate the adverse impacts of the proposal. There was clear and convincing  
evidence that height, bulk, and scale impacts documented through environmental  
review were not adequately mitigated by design review.
- d. SMC 25.05.675.G violates SEPA as it was applied to this proposal. When combined  
with the reality of the Design Review process, this provision created an impossible  
burden on the public that is inconsistent with the intent and requirements of SEPA.
- e. SDCI erred in its exercise of its substantive authority under SEPA issues, including  
failure to adequately mitigate the significant adverse impacts described above  
pursuant to SMC 25.05.675 and other SEPA regulations. SDCI erred when it failed  
to consider and/or exercise its authority under those provisions to mitigate the

1                   proposal. SDCI failed to apply feasible mitigation that could be applied to this  
2                   project as explicitly stated in SMC 25.05.675.

3                   2. The Recommendation of the Design Review Board and the Director's Decision to approve  
4                   that Recommendation were made in error and should be reversed for the following reasons:

5                   a. The Design Review process violated SEPA regulatory and case law requirements  
6                   that disclosure and analysis of environmental impacts must occur before a decision  
7                   maker commits to a particular course of action. SEPA review must inform decision  
8                   makers and the public of environmental impacts and mitigation measures that would  
9                   avoid or minimize those impacts of the proposal *before* decisions are made. In direct  
10                  violation of law, the Design Review Board's decisions were not informed by SEPA.  
11                  The Design Review Board issued its Final Recommendation at its September 13,  
12                  2017 meeting, before SEPA review had been completed. The Design Review Board  
13                  improperly made decisions that locked in the design during the Design Review  
14                  process before SEPA review was conducted. The Board's Recommendation  
15                  unlawfully built momentum in favor of the facility without the benefit of  
16                  environmental review in violation of SEPA. The Design Board's action also  
17                  improperly limited the choice of alternatives before SEPA review was conducted.  
18                  To the extent that the Seattle code requires this, we challenge the legality of those  
19                  provisions as applied in this case.

20                  b. The East Madison Street Proposal is inconsistent with the Citywide Design  
21                  Guidelines CS1, CS2, CS3, PL1, DC1, DC2, and DC3. SDCI and the Design Review  
22                  Board misapplied and misconstrued these Design Guidelines when it recommended  
23                  approval of the Proposal. SDCI erred when it concluded that the decision and  
24                  recommendation of the Design Review Board was consistent with the Design  
25                  Guidelines.

26                  c. The Proposal is inconsistent with the Design Review Board's direction and  
                  requirements. The project should not have been approved because, to a significant  
                  degree, the design changes that were required by the Board in the Early Design  
                  Guidance meetings were not properly addressed by or responded to by the applicant.  
                  The Board had expressed multiple concerns, which are outlined in the attached MUP  
                  Decision, that were not ultimately adequately addressed by the applicant.

                  d. The Design Review Board decisions were made in error and were not fully informed  
                  because the Design Review process did not allow for meaningful public participation  
                  as was described in detail in the comment letters submitted on behalf of SMV by its  
                  representative. The Design Review Board may have violated SMC 23.41.014 to the  
                  extent that the members of the Board did not review the written public comments  
                  that were submitted regarding design review issues.

                  e. The Design Review Board decisions were made in error because they were not  
                  informed by environmental review as is required by SEPA. As a matter of law,

1 design review decisions should not have been made until after the SEPA process was  
2 completed. To the extent that SDCI argues that the Seattle code required the process  
3 that was followed in this case, this appeal challenges the relevant code provisions as  
they were applied.

4 f. SDCI erred when it approved the Design Review Board recommendation because  
5 the recommendation conflicted with conditions and mitigation that should have been  
6 applied by SDCI pursuant to SEPA and because the recommendation itself violated  
SEPA.

7 3. The Land Use Code Interpretation, SDCI Project No. 3028345, related to MUP Project  
8 3020338 by the Director of SDCI was made in error and should be reversed for the following  
reasons:

9 a. The Director's construction and application of SMC Section 25.09.180 was made in  
10 error. That section should be construed and applied as outlined in detail in the  
11 Request for Land Use Code Interpretation submitted by Claudia Newman on May  
12 23, 2018. That Request is attached and incorporated into this appeal. The  
13 geotechnical report is subject to the provisions for third party review in SMC  
14 25.09.080.C and SDCI failed to require that the developer adhere to those provisions.  
15 Furthermore, as will be demonstrated by the evidence at the hearing, because the  
16 project is not consistent with all of the provisions of Chapter 25.09 and all applicable  
provisions of Title 23, the waiver should not have been granted. Finally, because  
adverse impact on the steep slope area (including the steep slope area that is not on  
the project site) will result from the development, the waiver should not have been  
granted. SDCI's findings and conclusions otherwise were made in error.

17 b. The Director's construction and application of SMC Sections 25.09.060.B;  
18 25.09.180.D; 25.09.320.A.3.b; and 25.09.320.A.3.d was made in error. Those  
19 sections should be construed as outlined in detail in the Request for Land Use Code  
Interpretation submitted by Claudia Newman on May 23, 2018. That Request is  
attached and incorporated into this appeal.

20 SDCI's conclusion that the restrictions on development and vegetation removal in  
21 these sections of the code do not apply because the steep slope is eligible for relief  
22 from the prohibition in SMC 25.09.180.B.1 was based on an incorrect reading of the  
23 plain language of the code, the intent of the authors of the code, and city policy as  
24 expressed in the code and in the comprehensive plan. There are several examples of  
25 language in the code that belies SDCI's interpretation. For example, the language in  
26 the first sentence of SMC 25.09.180.B.2 explicitly requires that "all of the provisions  
of Chapter 25.09 and all applicable provisions of Title 23" must be met as a condition  
precedent to receiving a waiver of development in the steep slope area. These  
provisions make it clear that the requirements in SMC 25.09.060.B and SMC  
25.09.320 must be met by a developer before a waiver is approved. The authors of  
the code did not intend to allow a developer to remove a slope and then argue that

1 regulations don't apply. Instead, the code requires that developers meet the  
2 requirements of the code, including before developing that property.

3 Furthermore, SMC 25.09.180 states that "If removal of trees or vegetation in a steep  
4 slope area and its buffer is authorized as part of approved development [per SMC  
5 25.09.180.B.2], it shall be kept to a minimum, and shall be carried out pursuant to a  
6 tree and revegetation plan described in section 25.09.320... In addition to complying  
7 with Section 25.09.320, any replanting that occurs shall consist of native  
8 vegetation." The authors of the code explicitly intended that the requirement of  
9 keeping removal of trees and vegetation to a minimum applies to developers who  
10 are requesting a waiver per SMC 25.09.180.B.2. Also, the requirement for a "tree  
11 and revegetation plan" and native vegetation clearly also applies to development on  
12 the steep slopes. The requirement for a "tree and vegetation plan" demonstrates that  
13 the authors intended that those critical area requirements be adhered to. SDCI  
14 inappropriately disregarded all of these code requirements when it approved the  
15 proposal.

16 In general, the language in the code makes it clear that SMC 25.09 provisions apply  
17 to developers who receive waivers that allow development on a steep slope. SDCI  
18 erred in its failure to apply all of the relevant code provisions in ch. 25.09 SMC to  
19 the proposal.

20 c. The Director's construction and application of SMC Section 23.86.006.A.2 was  
21 made in error. That section should be construed as outlined in detail in the Request  
22 for Land Use Code Interpretation submitted by Claudia Newman on May 23, 2018.  
23 That Request is attached and incorporated into this appeal. In this case, the  
24 applicant's methodology is inconsistent with the spirit and intent of the code  
25 provision. Velmeir used the presence of the slope to its advantage to get extra height  
26 and then proposed to remove the slope completely. The structure does not "respond"  
to the topography of the lot, it exploits the topography to its advantage to gain extra  
square footage and then removes the slope entirely so that the building ends up being  
built at a height that exceeds the appropriate height for the zone.

4. The Approval of the Land Use Application by the Director of SDCI was made in error and  
should be reversed for the following reason:

a. The East Madison Street Proposal is inconsistent with the tree removal restrictions  
set forth in Ch. 25.11 SMC. The proposed removal of trees does not comply with the  
requirements set forth in SMC 25.11.040; SMC 25.11.050; SMC 25.11.080; SMC  
25.11.090. The applicant did not adequately identify the trees that are subject to the  
code limitations; did not meet the burden of proof required to justify removal of trees  
that are subject to code limitations; did not meet the canopy replacement  
requirements in the code; and did not meet the replacement and restoration  
requirements in the code.

1  
2 **3. Relief Requested.**

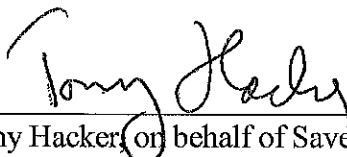
3 Appellant requests that the Hearing Examiner reverse the Determination of Non-Significance that  
4 was issued by the Director of SDCI for the East Madison Street Proposal and remand the matter to  
5 SDCI for further analysis and mitigation as deemed necessary by the evidence presented at the  
6 hearing. To the extent that the evidence demonstrates that the Proposal will have probable significant  
adverse impacts that have not or cannot be mitigated, then Appellant requests that the Examiner  
order that SDCI prepare an Environmental Impact Statement for the Proposal.


7 Appellant requests that the Hearing Examiner reverse the Design Review decision that was issued  
8 by the Director of SDCI for the East Madison Street Proposal and remand to the appropriate body  
9 (Design Review or the Director) for further analysis after proper SEPA review has been conducted  
and/or as deemed necessary by the evidence presented at the hearing.

10 Appellant requests that the Hearing Examiner reverse the conclusions made in the Land Use Code  
11 Interpretation, SDCI Project No. 3028345, related to MUP Project 3020338 by the Director of SDCI  
12 and remand to SDCI to conduct a new review based on a proper construction of the code provisions  
at issue. Appellant also requests that the Hearing Examiner remand the matter to SDCI to conduct a  
new review based on a proper construction and application of provisions in ch. 25.11 SMV.

13 Appellant requests any and all additional relief that is necessary to address and alleviate the errors  
14 raised by the objections to the Decisions that are presented in Appellant's appeal.

15 Filed on behalf of SAVE MADISON VALLEY this 6th day of August, 2018.

16  
17  
18 By:   
19 Tony Hacker, on behalf of Save Madison Valley

20  
21 And by:   
22 Claudia M. Newman  
23 BRICKLIN & NEWMAN, LLP  
24 Representative of Save Madison Valley  
25  
26