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HEARING EXAMINER

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

Nos. S-18-011; MUP-18-020

MOTION FOR CLARIFICATION

I. INTRODUCTION

On August 6, 2018, Save Madison Valley (“SMV”) appealed the Director’s Decision and Code Interpretation associated with Projects 3020338 and 3028345. SMV’s appeal contains broad statements that lack specificity. For example, SMV’s appeal alleges that the Director’s Decision will result in probable significant adverse impacts related to certain elements of the environment, but SMV does not identify with specificity the purported impacts. Thus, TVC Madison Co. LLC (“Velmeir”) cannot prepare for the hearing unless SMV identifies the elements of its appeal with the specificity that is required by the Seattle Municipal Code.

The applicant, Velmeir, submits this motion for clarification, respectfully requesting that the Hearing Examiner direct SMV to clarify its appeal statement as identified in this motion. Granting the motion is consistent with SMC 23.76.022.C.3.a and Hearing Examiner Rule 3.04. Granting the motion will also allow the parties to prepare for an orderly and efficient hearing.

1 **II. LEGAL AUTHORITY**

2 The Seattle Municipal Code requires appellants to identify “specific objections” to the
3 Director’s Decision, for which relief is sought. SMC 23.76.022.C.3.a. (emphasis added); also
4 see Hearing Examiner Rule 3.01.d (requiring an appeal to provide “specific objections”).¹ The
5 Hearing Examiner Rules authorize any party to bring a motion for clarification, to make an
6 appeal complete and understandable. Hearing Examiner Rule 3.04.²

7 **III. APPEAL STATEMENTS FOR WHICH APPLICANT SEEKS CLARIFICATION**

8 Following below, Velmeir identifies provisions of SMV’s notice of appeal in italics.³ For
9 purposes of clarity, Velmeir has underlined the language in SMV’s appeal that lacks specificity.
10 Each identified provision is followed by Velmeir’s request for clarification.

11 **SMV Appeal, p. 1:21-2:4:**

12 *Velmeir used the presence of the slope to its advantage to get extra height and*
13 *then, ironically, proposed to remove the slope completely. Velmier argued for*
14 *and received a complete waiver of all steep slope and liquefaction protections in*
15 *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.

16 *All of this was done in violation of the Seattle Code. To the extent that project is*
17 *consistent with the code, this is largely because there are loopholes in the*
18 *language of certain provisions that have allowed unintended results that are*
19 *clearly inconsistent with the intent of the code and with the goals of the*
20 *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.

21
22 ¹ SMC 23.76.022.C.3.a provides: “The appeal shall be in writing and clearly identify each component of the Type II
23 Master Use Permit being appealed. ... Specific objections to the Director’s decision and the relief sought shall be
stated in the written appeal.”

24 ² Hearing Examiner Rule 3.04 provides: “On the motion of a party, or at the Hearing Examiner’s own initiative, the
25 Hearing Examiner may require that the appellant provide clarification, additional information, or other submittal that
the Hearing Examiner deems necessary to demonstrate the basis for the Hearing Examiner’s jurisdiction, or to make
the appeal complete and understandable. A request for clarification must be made in a timely manner so that other
parties have a reasonable opportunity to respond before hearing.”

26 ³ To ensure that the Appellant’s statements are transcribed accurately, the Applicant has not corrected typographical
errors.

1 **Velmeir Request For Clarification:**

- 2 i. Please identify the “waiver” that Velmeir received for all steep slope protections.
- 3 ii. Please identify the “waiver” that Velmeir received for all liquefaction protections.
- 4 iii. Please clarify, and describe with specificity what provisions of the Seattle Municipal
5 Code were violated, and how.
- 6 iv. Please clarify, and describe with specificity what Code sections and the “loopholes” to
7 which you refer.
- 8 v. Please clarify, and describe with specificity *how* these “loopholes” lead to *what*
9 unintended results.
- 10 vi. Please clarify, and describe with specificity which provisions of the Comprehensive Plan
11 were violated, and how.
- 12 vii. Please identify the “unintended results” that you are referring to, and what adverse
13 environmental impacts have they resulted in.
- 14 viii. Please clarify, and describe why SEPA demands mitigation for the “unintended results”
15 that SMV identifies in vii, above.

16 **SMV Appeal, p. 3:15-22:**

17 *Members of SMV will be significantly and adversely impacted by the East*
18 *Madison Street Proposal. The height, bulk, and scale of the proposal will*
19 *overwhelm the site and tower over SMV members’ homes. Currently, the project*
20 *site is largely forested. The tree canopy on the site covers approximately 36% of*
21 *the total parcel area and at least 39 of the trees on site are “significant” as that*
22 *term is defined by code. In the interest of covering practically every square inch*
23 *of the site with an enormous, oversized building, the developer has proposed*
24 *complete removal of the forest and replacing pervious with impervious surfaces*
25 *on site. The removal of trees and pervious surfaces will have severe stormwater,*
26 *aesthetic, environmental, and other impacts on members of SMV. The enormous*
loss of permeable surface that would result from this development would
exacerbate flooding and sewage overflow problems in the area where SMV
members live, which are currently out of control. The East Madison Street
Proposal will also introduce significant public safety issues, especially new traffic
and congestion onto the streets in the area that are used by members of SMV,
including the quiet, narrow residential street, Dewey Place East.

1 **Velmeir Request For Clarification:**

- 2 i. Please identify the Seattle Municipal Code provision that defines trees as “significant.”
- 3 ii. Please clarify, and describe with specificity how the project will “exacerbate flooding and
- 4 sewage overflow problems.”
- 5 iii. Please clarify, and describe with specificity how the project will introduce new “public
- 6 safety issues.”
- 7 iv. Please clarify, and describe with specificity how the project will create new traffic and
- 8 congestion concerns of SMV.

9 **SMV Appeal Statement 1(a), p. 4:4-9:**

10 *The Director did not require or collect the necessary and adequate information*

11 *upon which to make a determination on whether the East Madison Street*

12 *Proposal would have significant adverse impacts related to steep slopes, surface*

13 *water, groundwater, sewer and waste water, flooding, trees, wildlife habitat, land*

14 *use, aesthetics (including height, bulk, and scale), public safety, traffic and*

15 *transportation, construction, and public infrastructure/utilities. The information*

16 *provided in the environmental checklist and the supplemental information relied*

17 *upon by the responsible official to issue a DNS was inadequate, misleading,*

18 *incomplete, and incorrect. The comments letters, request for interpretation, and*

19 *oral testimony submitted on behalf of SMV and it’s members provide details on*

20 *these topics.*

17 **Velmeir Request For Clarification:**

- 18 i. Please clarify, and describe with specificity what information in the environmental
- 19 checklist was inadequate, misleading, incomplete, and incorrect.
- 20 ii. Please identify the comment letters that discuss these issues.

21 **SMV Appeal Statement 1(b), p. 4:10-17:**

22 *The East Madison Street Proposal will have probable significant adverse impacts*

23 *related to steep slopes, surface water, groundwater, sewer and waste water,*

24 *flooding, trees, wildlife habitat, land use, aesthetics (including height, bulk, and*

25 *scale), public safety, traffic and transportation, construction, parking, noise, and*

26 *public infrastructure/utilities. The Director erred in concluding otherwise. These*

27 *impacts were not adequately disclosed, analyzed, or mitigated by SDCI. The lack*

28 *of analysis of the impacts of the tree removal is particularly alarming. The City’s*

1 regulations do not adequately address or mitigate the environmental impacts of
2 this Proposal. The Director erred in concluding that no further mitigation was
3 warranted for the significant impacts that will be caused by the Proposal. The
4 comments letters, request for interpretation, and oral testimony submitted on
5 behalf of SMV and it's members provide details on these topics.

6 **Velmeir Request For Clarification:**

7 i. Please clarify, and describe with specificity what the probable significant adverse impacts
8 are related to:

- 9 • steep slopes,
- 10 • surface water,
- 11 • groundwater, sewer and waste water,
- 12 • flooding,
- 13 • trees,
- 14 • wildlife habitat,
- 15 • land use,
- 16 • aesthetics (including height, bulk, and scale),
- 17 • public safety,
- 18 • traffic and transportation,
- 19 • construction,
- 20 • parking,
- 21 • noise, and
- 22 • public infrastructure/utilities.

23 ii. Please identify the comment letters that “provide details on these topics.”

24 iii. Please identify with specificity how the City’s regulations do not adequately mitigate the
25 proposal.

26 **SMV Appeal Statement 1(c), p. 4:17-21:**

*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*

1 *proposal. The height, bulk, and scale of the proposal will cause significant*
2 *adverse aesthetic and land use impacts. The design guidelines do not adequately*
3 *address or mitigate the adverse impacts of the proposal. There was clear and*
4 *convincing evidence that height, bulk, and scale impacts documented through*
5 *environmental review were not adequately mitigated by design review.*

6 **Velmier Request For Clarification:**

- 7 i. Please clarify, and describe with specificity what significant adverse aesthetic and land
8 use impacts are caused as a result of the height, bulk, and scale of the proposal.
9 ii. Please also clarify what aspects of height, bulk, and scale are not adequately addressed
10 and mitigated by the design guidelines and design review.

11 **SMV Appeal Statement 2(b), p. 5:13-17:**

12 *The East Madison Street Proposal is inconsistent with the Citywide Design*
13 *Guidelines CS1, CS2, CS3, PL1, DC1, DC2, and DC3. SDCI and the Design*
14 *Review Board misapplied and misconstrued these Design Guidelines when it*
15 *recommended approval of the Proposal. SDCI erred when it concluded that the*
16 *decision and recommendation of the Design Review Board was consistent with*
17 *the Design Guidelines.*

18 **Velmeir Request For Clarification:**

- 19 i. Please clarify, and describe with specificity how the proposal is inconsistent with
20 Citywide Design Guideline CS1, CS2, CS3, PL1, DC1, DC2, and DCS3.

21 **SMV Appeal Statement 2(d), 5:22-25:**

22 *The Design Review Board decisions were made in error and were not fully*
23 *informed because the Design Review process did not allow for meaningful public*
24 *participation as was described in detail in the comment letters submitted on*
25 *behalf of SMV by its representative. The Design Review Board may have violated*
26 *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.

Velmeir Request For Clarification:

- i. Please clarify, and describe with specificity, any ways that the Design Review process
did not allow for meaningful public participation.

- 1 ii. Please identify the SMV comment letters that details SMV's appeal issue regarding
2 "meaningful public participation."

3 **SMV Appeal Statement 3(a), p. 6:9-15:**

4 *The Director's construction and application of SMC Section 25.09.180 was made*
5 *in error. That section should be construed and applied as outlined in detail in the*
6 *Request for Land Use Code Interpretation submitted by Claudia Newman on May*
7 *23, 2018. That Request is attached and incorporated into this appeal. The*
8 *geotechnical report is subject to the provisions for third party review in SMC*
9 *25.09.080.C and SDCI failed to require that the developer adhere to those*
10 *provisions. Furthermore, as will be demonstrated by the evidence at the hearing,*
11 *because the 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.

12 **Velmeir Request For Clarification:**

- 13 i. Please clarify, and describe with specificity the steep slope located off-site that will be
14 impacted by the project.
15 ii. Please clarify, and describe with specificity the adverse impact on the steep slope area
16 that is not on the project site.

17 **Appeal Statement 3(c), p. 7:14-19:**

18 *The Director's construction and application of SMC Section 23.86.006.A.2 was*
19 *made in error. That section should be construed as outlined in detail in the*
20 *Request for Land Use Code Interpretation submitted by Claudia Newman on*
21 *May 23, 2018. That Request is attached and incorporated into this appeal. In this*
22 *case, the applicant's methodology is inconsistent with the spirit and intent of the*
code provision. Velmeir used the presence of the slope to its advantage to get
extra height 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.

25 **Velmeir Request for Clarification:**

- 1 i. Please clarify, with specificity, what is the “spirit and intent” of the Code SMC
2 23.86.006.A.2.

3 **SMV Signature Line, p. 8: 17-23:**

4 The appeal is signed by Tony Hacker and Claudia Newman. Ms. Newman signed as the
5 party representative, but it is unclear whether Mr. Hacker also intends to speak on behalf of SMV
6 because he is a signatory.

7 **Identification of Party Representative:**

- 8 i. Please identify the “party representative” of SMV pursuant to Hearing Examiner Rule
9 3.07 (“When a party consists of more than one person, or is an organization or other
10 entity, the party shall designate an individual or firm to be its representative ...”).

11 **IV. CONCLUSION**

12 Velmeir respectfully requests that the Hearing Examiner grant its motion for clarification
13 pursuant to Hearing Examiner Rule 3.04.

14
15 DATED this 13th day of September, 2018.

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