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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

HEARING EXAMINER FILE:  
MUP-18-020 (DR, W) & S-18-011

**VELMEIR'S REPLY IN SUPPORT OF  
MOTION FOR CLARIFICATION**

**I. INTRODUCTION**

Fundamental fairness and due process require that the appellant, Save Madison Valley (“SMV”), articulate the specific factual and legal bases for its appeal. SMV’s appeal involves technical information across multiple expert disciplines and both SDCI and the applicant, TVC Madison, LLC (hereinafter “Velmeir”), have a right to understand specifically what SMV believes is wrong with the SDCI’s MUP Decision and Code Interpretation. SMV’s Response proposes trial by ambush (having SMV reveal the specific bases for its appeal at the hearing), which is antithetical to a proper quasi-judicial process and the requirements of the City Code and Hearing Examiner Rules (“HERs”).

SMV’s appeal lacks the specificity that is required for the SDCI and Velmeir to prepare for the appeal hearing. The appeal should articulate SMV’s allegations with sufficient detail that City staff and Velmeir’s experts can understand the nature of the claim and prepare a reasoned response. The problem with SMV’s appeal is illustrated by Notice of Appeal (“Appeal”) paragraphs 1(a) and 1(b), wherein SMV alleges impacts to fifteen different aspects of the

1 environment, without stating what those impacts are or what Code provisions have been violated  
2 by the City’s MUP Decision or Code Interpretation:

3 *The East Madison Street Proposal will have probable significant adverse impacts*  
4 *related to steep slopes, surface water, ground water, sewer and waste water,*  
5 *flooding, trees, wildlife habitat, land use, aesthetics (including height, bulk and*  
6 *scale), public safety, traffic and transportation, construction, parking, noise, and*  
7 *public infrastructure/utilities.*

8 At Appeal 1(a), SMV alleges that the Director did not collect “adequate and necessary  
9 information” on these fifteen aspects of the environment and that the information in the SEPA  
10 documents was “inadequate, misleading, incomplete, and incorrect.” Yet, SMV fails to explain  
11 what SEPA information was uncollected or “inadequate, misleading, incomplete and incorrect.”

12 Similarly, at Appeal 2(b), SMV alleges that the MUP Decision is inconsistent with seven  
13 city-wide design guidelines, but SMV does not explain *how* the MUP Decision is inconsistent  
14 with the guidelines. Appeal 2(c) states that the “[Design Review] Board had expressed multiple  
15 concerns, which are outlined in the attached MUP decision, that were not adequately addressed  
16 by the applicant”—begging the questions of what Board concerns were not adequately  
17 addressed? and what provisions of the MUP Decision evidence the allegedly unaddressed  
18 concerns?

19 In this appeal, SMV has the burden of proof and must establish a *prima facie* factual and  
20 legal case that the City erred in either the MUP Decision or Code Interpretation. So that SDCI  
21 and Velmeir are not unfairly surprised at the hearing, the Code and the HERs require SMV to  
22 identify its “specific objections” to the appealed decisions. SMC 23.76.022.C.3.a and HER  
23 3.01(d). SMV concedes as much in their Response. Response, p. 5 (acknowledging that HER  
24 3.01.d.3 and SMC 23.76.022.C.3.a require provision of specific objections to the decision being  
25 appealed.) Neither the Code nor the HERs allow SMV to hide behind vague appeal statements  
26 that are clarified for the first time during the December hearing.

1 For these reasons, Velmeir respectfully requests that the Hearing Examiner grant  
2 Velmeir’s motion for clarification and maintain the established briefing and hearing schedule.

3 **II. LEGAL ARGUMENT**

4 **A. The City Code and Hearing Examiner Rules Require a Specific Appeal that**  
5 **Comports with Fair Treatment and Due Process.**

6 It is disingenuous for SMV to complain that providing the specific information required  
7 by the Code and HERs would “take a significant amount of time and effort” (Response p. 1) or  
8 that HER 3.04 “appears to recognize appellants who are unfamiliar with land use law . . . may  
9 file appeals that do not clearly articulate the specific issues that they intend to pursue.”  
10 Response, p. 2. Here, SMV is represented by experienced land use counsel, and SMV’s appeal  
11 requires all parties to expend significant time and effort. It is also disingenuous for SMV to  
12 propose that Velmeir and SDCI sift through hundreds of often contradictory comment letters and  
13 oral testimony to ascertain the bases for SMV’s claims. See, Appeal 1(a).

14 SMV carries the burden of proof in its appeal. SMC 23.76.022.C.7. As the party  
15 carrying the burden, the Code requires SMV to identify its “specific objections” to the appealed  
16 decision. SMC 23.76.022.C.3.a. The HERs require that SMV’s appeal include “specific  
17 objections.” HER 3.01(d)(3) (“An appeal *must* be in writing and *contain the following*: . . .(3) A  
18 brief statement of the appellant’s issues on appeal, *noting the appellant’s specific objections to*  
19 *the decisions or action being appealed.*”). Emphasis added.

20 Merriam-Webster defines “specific” as being “free from ambiguity.”<sup>1</sup> Moreover, the  
21 Hearing Examiner Rules expressly authorize the Examiner to require the appellant to “*provide*  
22 *clarification, additional information, or other submittal . . . to make the appeal complete and*  
23 *understandable.*” HER 3.04 (emphasis added). The HERs incorporate the concepts of fair  
24 treatment and due process, providing that the Hearing Examiner “shall determine the practice or

25 <sup>1</sup> Definition available online at: [https://www.merriam-webster.com/dictionary/specific?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld](https://www.merriam-webster.com/dictionary/specific?utm_campaign=sd&utm_medium=serp&utm_source=jsonld). Merriam-Webster also defines “specific” as “constituting or  
26 falling into a specifiable category.” Merriam-Webster defines “specifiable” as “to name or state explicitly or in detail.” Definition available at <https://www.merriam-webster.com/dictionary/specifiable>.

1 procedures most appropriate and consistent with *providing fair treatment and due process.*”  
2 HER 1.03(c) (emphasis added). Thus, the Code and the HERs both require that SMV provide  
3 unambiguous statements of the alleged deficiencies in the MUP Decision and Code  
4 Interpretation.

5 These requirements are not unduly burdensome. To the contrary they are incorporated in  
6 other analogous rules of procedure. The Land Use Petition Act (Ch. 36.70C RCW “LUPA”) and  
7 the State Superior Court Rules (“CRs”) are persuasive authority on the level of specificity  
8 required to ensure fair treatment and due process. LUPA requires an appellant to provide “a  
9 concise statement of each error alleged to have been committed” and provide “a concise  
10 statement of facts upon which the petitioner relies to sustain the statement of error.”  
11 RCW 36.70C.070(7) and (8) (establishing LUPA petition requirements). Similarly, CR 8(f)  
12 requires pleadings to be construed to do substantial justice. A complaint or appeal fails to meet  
13 this test if it “neglects to give the opposing party ‘fair notice.’” *Champagne v. Thurston County*,  
14 163 Wn.2d 69, 84, 178 P.3d 936 (2008).

15 Appropriate pleadings are a cornerstone to Velmeir’s due process rights. *State v. Eilts*,  
16 23 Wn. App. 39, 596 P.2d 1050 (1979); affirmed in *State v. Bedker*, 35 Wn. App. 490, 667 P.2d  
17 1113 (1983) (“A party sued civilly has important due process rights, including appropriate  
18 pleadings...”). Due process requires more than just alleging error. Due process requires the  
19 appellant to provide “specific objections” (as required in the Code or HER), or, put another way,  
20 to provide “a statement of facts” to sustain the statement of error (as specified in LUPA).

21 **B. The Examiner Should Require That SMV Provide Its “Specific Objections” to the**  
22 **MUP Decision and Code Interpretation.**

23 The Code and HERs required that SMV provide “specific objections” in its appeal  
24 statement. SMV’s argument that an appeal statement can be “brief” does not obviate the need  
25 for the statement to also be specific. The HER’s allowance for brevity also does not supersede  
26 the Hearing Examiner’s authority, consistent with the dictates of fair treatment and due process,

1 to require an appellant to “provide clarification, additional information, or other submittal ... to  
2 make the appeal complete and understandable.” HER 3.04.

3 SMV’s appeal fails to satisfy the minimum appeal requirements specified in HER  
4 3.01(d). For example, SMV alleges the Director’s Decision will result in probable significant  
5 adverse significant impacts to “land use” and “aesthetics” (Appeal, p. 4), but SMV does not  
6 explain *how* the Director’s Decision will result in probable significant adverse impacts to “land  
7 use” and “aesthetics.” “Land use” and “aesthetics” could mean virtually anything under the  
8 City’s voluminous land use code.

9 Similar arguments can be made for every other element of the environment identified by  
10 SMV. For example, SMV’s Response argues that “it is enough to say that East Madison Street  
11 Proposal will also introduce public safety issues, especially new traffic and congestions onto the  
12 streets.” Response, p. 6. SMV should articulate each public safety issue that it is alleging.  
13 SMV should also explain what traffic impacts it believes are unmitigated and what streets it  
14 believes are impacted.

15 SMV argues that its introductory appeal statements are not subject to clarification  
16 because the Code does not require introductions. SMV fails to acknowledge that the  
17 introduction is a part of its appeal, and all portions of the appeal are subject to the specificity  
18 requirements of SMC 23.76.022.C.3.a. and HER 3.01(d).

19 Finally, to the extent that SMV is arguing that the MUP Decision was made “in violation  
20 of the Seattle Code” and permitted through “loopholes” that “allowed unintended results that are  
21 clearly inconsistent with the intent of the code and with the goals of the Comprehensive Plan”  
22 (Appeal, pp. 1-2), Velmeir and SDCI have the right to know what these alleged “loopholes” are  
23 and what provisions of the Code and Comprehensive Plan have been allegedly violated.  
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1 **C. SMV Should Not be Granted Additional Time to Provide a More Definitive**  
2 **Statement.**

3 At the pre-hearing conference, SMV represented to the Hearing Examiner and the parties  
4 that, if ordered by the Hearing Examiner, SMV could provide a clarified appeal statement by  
5 October 12, 2018. Now, SMV argues that SMV “may submit a formal request for an extension  
6 of that deadline.”<sup>2</sup>

7 Velmeir respectfully requests that the Hearing Examiner deny any such request and  
8 maintain the agreed-upon schedule. HER 2.06 requires all parties to make every effort to avoid  
9 delay. SDCI issued its decisions in July 2018. Velmier should not be subjected to additional  
10 delay because SMV requests additional time to correct its deficient appeal.

11 **III. CONCLUSION**

12 Velmeir respectfully requests that the Hearing Examiner grant its motion for clarification  
13 pursuant to HER 3.04 and maintain the established briefing and hearing schedule.

14 DATED this 25<sup>th</sup> day of September, 2018.

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26 <sup>2</sup> SMV Response, p. 1 f.n. 1.

DECLARATION OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on September 25, 2018, I caused to be served:

1. MOTION FOR CLARIFICATION.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate.

DATED this 25<sup>th</sup> day of September, 2018, at Seattle, Washington.

  
\_\_\_\_\_  
Nikea Smedley, Legal Assistant