

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of)	Hearing Examiner File:
SAVE MADISON VALLEY,)	MUP-18-020 (DR, W) &
)	S-18-011
from approval of a land use application and a)	Department References:
land use interpretation by the Director,)	3020338, 3028345
Department of Construction and Inspections)	2925 E Madison Street
)	SDCI's Closing Statement

Summary

The subject appeal is of Seattle Department of Construction and Inspections (SDCI) Project 3020338 (“the project”), an application for a Master Use Permit (MUP), including review under the State Environmental Policy Act (SEPA) and Design Review to allow a six-story building consisting of 82 residential units above 25,850 square feet of retail space, located at ground level. Parking is proposed to be provided for 140 vehicles at and below grade. Existing structures are to be demolished.

The appeal by Save Madison Valley (SMV) (hereafter referred to as “appellant”), as limited by the Hearing Examiner in her order of November 19, 2018, raised various issues with respect to the SEPA and Design Review analysis in the SDCI decision, including allegations that the Director (of SDCI) erred in concluding that the project will not have probable significant adverse impacts related to steep slopes, surface water, groundwater, sewer and waste water, flooding, trees, wildlife habitat, land use, aesthetics (including height, bulk, and scale), public safety, traffic and transportation, construction, and public infrastructure/utilities and that the Design Review process resulted in sufficient review and mitigation of the height, bulk, and scale impacts of the project.

A formal interpretation of the Seattle Land Use Code was also requested by appellants in relation to Project 3020338, Interpretation No. 17-004 (Project 3028345), and this interpretation was also appealed. The interpretation analyzed the issues related to whether the project site meets the requirements of Seattle Municipal Code (SMC) Section 25.09.180.B.2.b for relief from prohibition on development in steep slope critical areas; whether the proposed development, which includes removal of existing trees and other vegetation from the site, will comply with SMC Sections 25.09.060.B, 25.09.180.D, and 25.09.320.A.3.b and 25.09.320.A.3.d, which address removal of vegetation from steep slope critical areas and buffers, and avoidance of adverse impacts to critical areas and buffers by restricting development to the most environmentally suitable, naturally stable, and least sensitive portions of a site; and whether the average grade level of existing lot grades was properly calculated under SMC Section

23.86.006.A.2 by the method of designating rectangular sections of the proposed structure at least 15 feet wide and finding average elevation of the existing lot grades at the midpoints of the two opposing exterior sides of each designated rectangular section.

The appellant ultimately did not challenge SDCI's conclusions in the interpretation that the project complied with Code requirements for development in steep slope critical areas under SMC Chapter 25.09 or that the project height was correctly measured under SMC Section 23.86.006.A.2. However, the appellants attempted to argue that the application of the Code standards to the project would result in probable significant adverse environmental impacts under SEPA.

Finally, the appellant asserted that the project was inconsistent with tree protection and removal requirements under SMC Chapter 25.11. In her November 19, 2018 Order, the Examiner acknowledged that there is no process for an administrative appeal of SMC Chapter 25.11, but allowed the appellant to provide evidence to demonstrate a linkage of the requirements of Chapter 25.11 to the Director's decision on design review with respect to compliance with guidelines for trees and replacement canopy.

SDCI's position is that the appellant has failed to present sufficient evidence at hearing on any of the appeal issues to demonstrate that the SDCI decision is clearly erroneous. Instead, the clear evidence presented by SDCI and the project applicant shows that the Director's decision should be affirmed in all respects and the appeal should be rejected. The SDCI decision and related Code interpretation are well supported by the evidence in the record.

Burden of Proof

SMC Section 23.76.022.C.7 sets forth the standard of review for administrative appeals of "Type II" Master Use Permit approvals, such as the subject design review decision and SEPA determination. Subsection C.7 provides in part as follows: "The Director's decisions . . . shall be given substantial weight . . ." Thus, the appellants have the burden of proof to show that the subject SDCI decision is clearly erroneous. Similarly, SMC Section 23.88.020.G.5 provides, in part: "The interpretation of the Director shall be given substantial weight, and the burden of establishing the contrary shall be upon the appellant." This, too, sets forth the "clearly erroneous" standard of review.

Under the clearly erroneous standard, the Hearing Examiner must be left with the definite and firm conviction that a mistake has been committed by SDCI in its analysis and decisions. As is clear from a review of the facts and analysis presented by SDCI and the applicant at the hearing, the appellants have failed to meet this burden. While the appellant has raised numerous issues based on items in the SEPA checklist or the Design Review guidelines, mere recitation of issues and presentation of witness testimony, often based solely on opinion of that witness, is insufficient to demonstrate that the SDCI decision is clearly erroneous.

The remedy sought by appellant is a remand for further review and imposition of additional SEPA conditions allegedly required to mitigate adverse impacts. However, the record at hearing

shows that the appellant has failed to offer sufficient information about either substantive issues or procedural matters to justify a remand of the SDCI decisions. SDCI's position is explained in further detail below.

Argument

A review of the testimony and record submitted at the hearing of the subject appeal shows that the SDCI project decision and the related interpretation were properly analyzed and should be affirmed by the Hearing Examiner. The testimony by appellant's witnesses at the hearing focused heavily on issues of height, bulk and scale impacts under SEPA (and whether the Design Guidelines were correctly analyzed to mitigate height, bulk, and scale impacts), groundwater, drainage and flooding impacts, tree and vegetation removal and replacement, traffic and parking, and to a lesser extent construction related impacts, slope stability, lighting, wildlife, and shadow impacts.

Master Use Permit Decision

1. The Design Review process was correctly followed by SDCI and the resulting analysis followed the design guidelines sufficiently mitigated height, bulk and scale impacts, and other aesthetic impacts, under SEPA.

The project requires Design Review pursuant to SMC Chapter 23.41. There was a total of four Design Review meetings. Two is more typical, according to the testimony of SDCI Senior Land Use Planner Magda Hogness, who drafted the MUP decision for the project.¹ (Exhibit 14.) There were three Early Design Guidance (EDG) meetings before the East Design Review Board ("DRB" or "Board") on July 13, 2016, October 26, 2016, and January 25, 2017. The applicant submitted its MUP application in April 2017, and the Recommendation meeting was held on September 13, 2017. At all four meetings extensive public comments were heard and considered by the DRB, including summaries of comments received by SDCI prior to the meetings. There was also a fifth public meeting, independent of the DRB meetings, to consider SEPA issues, which was held on June 6, 2017.

The project followed the EDG purpose (per 23.41.014.C.2). At the three EDG meetings and one Recommendation meeting, Ms. Hogness encouraged the DRB to fully address Height, Bulk and Scale and Topo and context issues at the zone edge condition as documented in each meeting report (see generally Exhibits 62-74). Several memos to the DRB provided staff review, summarized public comment to date, and provided guidance to the DRB respecting its authority. After each review and Design Review meeting the applicant responded by modifying the proposal to meet the Board guidance.

At all four Design Review meetings, the DRB carefully considered height, bulk, and scale issues due to the zone edge condition (the project's NC2P-40 and NC2P-30 zoning adjacent to SF 5000

¹ Ms. Hogness is now employed as an Urban Designer with the Seattle Office of Planning and Community Development (OPCD), after a recent transfer from SDCI.

at the 30-foot Dewey Place East right of way). In consideration of the importance of the zone edge, the DRB selected Citywide Design Guideline “CS2-D Height, Bulk, and Scale” as a Priority Guideline which include the more detailed design guideline language “CS2-D-3 Zone Transitions: For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s). Projects should create a step-in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development.”

As with any project, the DRB’s authority is limited to the Design Review Guidelines. The DRB does not have the authority, for example, to weigh in on whether a project will meet height calculations. However, as some guidelines relate to height, such as height, bulk and scale, and those topics are in the DRB’s purview, the DRB could state that while the project appears to meet the code compliant height calculation, it is too tall considering the Design Guidelines. This authority was repeatedly clarified to the Board in several staff memos. The Board had the authority to ask for additional massing changes at each meeting and throughout the process they had done so.

At the first EDG meeting, the DRB reviewed three massing options (see EDG booklet, Exhibit 63) and largely in deference to the neighboring SF 5000 zone agreed that the massing needed to further transition along Dewey. Additionally, the DRB gave explicit guidance (see Design Review Analysis section of Decision, Exhibit 14) to study the blank wall/parking garage frontage along Dewey and provide additional setbacks to respond to the site topography and transition to the single-family zoning. (CS1-C, CS2-A, CS2-D-2, CS3-A-1, CS2-B-3, DC1, DC3-C-3)

The design was changed in response to DRB guidance (see EDG booklet, Exhibit 67) and presented at the second EDG meeting. While the Board acknowledged the changes to the design the Board agreed with the public’s concern that the height, bulk and scale of the Dewey frontage was not yet fully resolved and that the massing needed to transition further to respond to the single-family zone. The Board directed the applicant to return with a modified massing option based on the detailed guidance provided for the Dewey frontage. (see Design Review Analysis section of Decision, Exhibit 14) (CS1-C, CS1-D, CS2-A, CS2-B, CS2-D, DC2-A, DC3-C-3)

At the third Recommendation meeting, in response to DRB requests, the massing was modified, and residential units were added to face Dewey (see EDG booklet, Exhibit 71). The DRB endorsed these changes and agreed that the massing development is responsive to previous guidance and that the design, overall, is on the right track. The Board strongly supported the rearrangement of uses, specifically the addition of residential units along the Dewey frontage as the use better reflects the residential character of the neighborhood, provides an intentional transition to the surrounding single-family zoning and better responds to the existing topography. The Board also gave direct guidance on the massing and design development of this frontage. (see Design Review Analysis section of Decision, Exhibit 14). (CS1-C, CS2-A, CS2-D, CS3-A-1, DC1, DC2-A-2)

In response to DRB guidance, the Dewey frontage was modified in line with Board guidance and presented at the Recommendation meeting to read as a simplified and cohesive expression.

Comparative graphics of the prior and current design are shown on pages 8-15 of the Design Review Recommendation Meeting booklet, Exhibits 58 and 75). At the Recommendation meeting, the Board concluded that the applicant had thoughtfully modified the proposal to respond to the context and previous guidance. The Board supported the overall design advancement and conditioned changes to the upper setbacks along the Dewey frontage to better differentiate the lower and upper massing. While the Board acknowledged that the setback had decreased with the addition of units along the Dewey frontage, as shown at the previous Early Design Guidance meeting, the Board continued to support the arrangement and massing of the townhouse units, as opposed to a visible parking garage and larger setback, since the design better reflects and responds the residential character of the neighborhood. (CS1-C, CS2-A, CS2-B, CS2-D, CS3-A-1, DC1, DC2-A-2). See page 18 of Exhibit 14.

Thus, SDCI concludes that the proposal met the requirements of SMC 23.41, described on pages 24-25 of Exhibit 14. By meeting the requirements for Design Review, it is clear that height, bulk, and scale impacts of the project required to be considered under SEPA were addressed.

Appellants' witness, architect Peter Steinbrueck, testified that there were other possible ways to design the building and disagreed with the DRB's application of the guidelines and recommendations on design changes, but differences of opinion as to the building design and application of design guidelines is an insufficient basis for remand of a Design Review analysis. In his testimony, the witness basically recited from a long list of Design Guidelines that he selected and felt were relevant. See Exhibit 15. However, there was no analysis in Exhibit 15 and no real analysis provided in testimony. The witness recited each guideline and then asserted that it was not met. He never specifically addressed the priority guidelines considered by the DRB. For example, in his discussion of Guideline CS1-C, topography, he asserts that the structure does not "gracefully step down the hillside," and that the "building should be more terraced" and "hug the ground." This is opinion about a possible alternative design. The DRB considered a variety of alternative designs as described in Exhibit 14 as well as further detailed generally in Exhibits 62 through 78. It was not obligated to accept one particular opinion as to design. While the witness has served the public in a number of capacities, he has never served on a Design Review Board.

Even if the project were redesigned to "hug the slope," development standards of the Land Use Code such as the height standards, floor area ratio, and minimal setbacks of the applicable NC2-30 and NC2-40 zones, as well as the size of the site itself, not only allow but contemplate the construction of larger urban scale structures. The "edge zone" condition of the property, separated from Single-Family residences by the Dewey Place right-of-way, is a consideration for Design Review but is not addressed by the Code itself. The project, as modified by the DRB recommendations and conditioned by the MUP decision, is considerably smaller than full potential of what could be built under the Code, the upper levels are set back from Dewey Place, and a residential appearance is provided along Dewey by the presence of "townhouse" style apartment units in front of the parking levels, which appellants' witness Mr. Steinbrueck acknowledged was a "meaningful change in the project." There is also detailed landscaping proposed along Dewey that mitigates appearance of bulk.

The entire Design Review process and the response of the project to both public comment and DRB concerns was well summarized in the testimony of SDCI witness Magda Hogness, the project planner, and also discussed in great detail by the applicant's architect, Charles Strazzara. See, in particular, Exhibit 149, which provides a good graphic overview of how the project design evolved over four meetings and multiple rounds of project "correction notices" sent by reviewers, particularly Ms. Hogness, the Land Use Code or zoning reviewers, Emily Lofstedt and Art Pederson, and by the reviewing arborists Mr. Pederson and his predecessor Seth Amrhein.

The DRB reviewed all aspects of the proposed project at four meetings, and carefully addressed all code and design guidelines within its purview. The DRB has no authority to change the site zoning or reduce the code maximum height. There was no error in its review of the project and its recommendations are not clearly erroneous.

2. The decision on the project sufficiently mitigated height, bulk and scale impacts, and other aesthetic impacts, under SEPA.

Pursuant to SEPA Policy 25.05.675.G.2.c regarding Height, Bulk and Scale, "The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk and scale impacts addressed in these [SEPA] policies. A project that is approved pursuant to the Design Review process is presumed to comply with the height, bulk and scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated." [Emphasis added]. The project went through Design Review and numerous design adjustments, supported by adopted design guidelines, which were implemented in consideration of the zone change at the Dewey Place East right-of-way. There is ample evidence the project was revised and reduced in permitted size to mitigate height, bulk and scale impacts, and additional SEPA mitigation of height, bulk and scale is not warranted.

3. Parking and traffic impacts were sufficiently analyzed by the MUP decision and further mitigation under SEPA is not warranted.

The project was conditioned to mitigate the adverse impacts from the proposed development, consistent with the SEPA traffic and transportation policy per SMC 25.05.675.R. Transportation information was provided by the applicant's traffic expert, Gibson Traffic Consultants, in various documents (*Bill: we may want to specify these, but I'm not sure of the exhibit numbers.*) The appellants and their transportation consultant, Ross Tilghman, raised several concerns about the information in these studies, and about transportation issues more generally. Mr. Tilghman questioned the choice of Dewey Place East for project access. A strict reading of the Land Use Code would require all project access on Dewey. Gibson's transportation report analyzed potential impacts from three access scenarios: all access on Dewey, all access on E Madison Street, and split access. After reviewing this material, SDOT and SDCI agreed that split access was most appropriate. Splitting the access balances the project's transportation impacts; some increased traffic will occur on Dewey, a residential street, but the bulk of new traffic will occur on Madison, an arterial.

Dewey currently carries very low volumes of traffic. Although new traffic volumes will be noticeable, Dewey and other nearby streets, such as Republican and 30th, have sufficient capacity to accommodate the modest number of additional trips from the project (343 new daily trips, 25 new AM peak hour trips, 32 new PM peak hour trips). The intersection of Dewey and Republican, the closest intersection to the project's access point on Dewey, is forecast to operate at Level of Service (LOS) A with or without the project during the PM peak hour, indicating little or no congestion. Appellants expressed concern over vehicles being able to pass each other due to the narrow width of Dewey between the driveway and Republican. Low forecast volumes on Dewey even with the project suggest that cars approaching each other from opposing directions on Dewey would occur infrequently. When this does occur, cars would take turns traveling on this stretch of Dewey, as is common in Seattle residential neighborhoods. If simultaneous opposing traffic occurs more frequently, or leads to unanticipated problems, SDOT likely would exercise its authority to restrict parking along one side of Dewey and create an additional travel lane.

Occasional traffic blockages may occur on Dewey if a vehicle is parked between the driveway and Republican; in such instances, vehicles may use 30th as an alternate route, or wait for the vehicle to move. If such a vehicle blocks Dewey for one-half hour during the busiest hour of the day (the PM peak hour), and all traffic chooses to divert to 30th, this would add 16 vehicle trips to traffic volumes on 30th during this half-hour. This would be a modest traffic increase of roughly 1 car every 2 minutes and would be expected to occur very infrequently.

As traffic volumes from the residential portion of the project are forecast to be low, additional trips on particular residential streets also will be low. The project is expected to add approximately 10 trips during the AM peak hour on Republican east of Dewey, portions of which are on the Safe Routes to School network. This very small increase in traffic volumes is not likely to impact safety.

To forecast the net change in traffic due to the project, Gibson estimated the traffic being generated by the existing use using trip rates from the Institute of Transportation Engineers' (ITE) Trip Generation manual, a standard industry reference. (Traffic analysis methodology typically subtracts any existing trips that will no longer be generated from a site due to removal or demolition of a use from the estimated trips that a new development will generate to calculate the net new trips due to a project; the greater the existing trips that will be removed, the lower the net increase.) Mr. Tilghman indicated that a preferable method would be to count vehicle trips at the site driveway; he stated that such driveway counts resulted in an existing trip estimate roughly two-thirds that of the ITE-based estimate. However, Gibson reduced the ITE-based trip generation estimate by 25% to account for "pass-by" trips, which are currently on the roadway network and would not be removed when the existing use is gone. This adjustment to the ITE-based estimate results in a similar peak hour trip estimate to that obtained by Mr. Tilghman from the driveway counts. Use of driveway counts to estimate existing trip generation would not be expected to substantially change the traffic operations analysis or the results of the transportation study.

Mr. Tilghman expressed concern regarding the location of the loading dock and the Madison Street parking garage access parallel to one another. The doors of the loading dock will be closed when it is not in use, limiting potential confusion for auto vehicle drivers. Additionally, a MUP condition requires that flaggers be used to facilitate truck maneuvering into the loading dock, further reducing potential impacts between auto and truck traffic. If confusion between the parking garage and loading dock entrances persists, the project could provide signage clearly indicating the respective access points.

Mr. Tilghman provided a revised traffic operations analysis at the project's driveway on Madison Street. This revised analysis indicates outbound traffic would operate at LOS F during the PM peak hour, as had been documented in the Gibson traffic analysis, albeit with greater delay. To the extent that delay for vehicles exiting the parking garage is perceived by customers to be unacceptably long, they likely will choose to park on-street, shift their shopping trip to a non-peak time, choose to shop elsewhere, or some combination of these strategies. Any of these responses would reduce project traffic exiting the driveway during peak times, and therefore reduce the delay for exiting vehicles. On-going substantial delays at the Madison driveway could be addressed through SDOT rechanneling the segment of Madison adjacent to the project site to provide a two-way left-turn lane.

Although the project will result in increased traffic volumes in the vicinity of the project site, the Gibson traffic analysis indicated no auto traffic impacts that warrant mitigation. As noted in the MUP decision, the truck maneuvering on Madison Street (an arterial) would benefit from flaggers to facilitate backing maneuvers into the loading dock, and the MUP decision requires this as a condition of approval. As conditioned, the project will reasonably mitigate its likely transportation impacts.

4. The determination that all trees on site are allowed to be removed is consistent with applicable regulations, including SMC 25.11.050 and 25.11.080, as well as 25.09.060, 25.09.180, and 25.09.320, and no additional mitigation under SEPA is warranted.

As described in Exhibit 14 and by Ms. Hogness in her testimony, SDCI's Arborists reviewed the information on file and determined that the trees are authorized for removal. Further, the project is consistent with the provisions of SMC 25.11.050 and 25.11.080, which sets forth Exceptional tree determination and protection requirements, as well as SDCI's Director's Rule 16-2008. No mitigation beyond the Code-required landscaping is warranted under SMC 25.05.675.N.

The analysis of trees and vegetation is well summarized in Exhibits 40, 41, 45, and 46-50, and in the testimony of SDCI Senior Environmental Analyst Art Pederson, as well as applicant's witness Sean Dugan. As indicated in Exhibit 49, PoTech correction Notice #2 dated October 25, 2016, SDCI's arborist at that time, Mr. Amrhein, indicated that the applicant's arborist report showed that the trees on site were not appropriate for consideration as exceptional due to poor structure, disease, and past maintenance practices. But, in any case, the applicant's code compliant development would be likely to adversely impact any trees that were left in place and protected, making them unsuitable for long term retention. This conclusion was supported by the testimony of Mr. Pederson and Mr. Dugan.

Further, the applicant has submitted a suitable landscaping plan that ensures a replacement canopy. See Exhibit 46 and testimony of both Mr. Dugan and applicant's witness landscape architect Scott Evans.

The documentation and testimony concerning tree retention and landscaping discussed above was not refuted by appellant's witness, arborist Tina Cohen. Like Mr. Steinbrueck, Ms. Cohen raised a variety of questions about the analysis of existing trees and indicated her disagreement with applicant's landscaping choices but did not demonstrate that the proposed removal of trees and replacement with new landscaping would have a probably significant adverse impact on the environment. Her concerns about the longevity of landscaping are speculative and refuted by evidence that some of these same landscaping choices are used by Seattle Department of Transportation (SDOT) in its choice of street trees in the same vicinity as the project. She admitted that she did not comment or testify in any of the DRB meetings and was not aware of whether the applicant's landscape plan was consistent with DRB review. While she critiqued SDCI's analysis of both Chapter 25.11 and Director's Rule 16-2008, Designation of Exceptional Trees, these regulations are not subject to appeal and were in any case considered extensively by SDCI's arborists in their review. Ms. Cohen's testimony does not demonstrate that SDCI's review of tree and vegetation issues was clearly erroneous.

5. SDCI's analysis of steep slopes, surface water, groundwater, sewer and waste water was supported by substantial evidence in the record, follows regulations, and should be affirmed under SEPA.

SDCI geotechnical experts reviewed impacts and determined that the Regulations for Environmentally Critical Areas (SMC Chapter 25.09) (ECA regulations), as well as Grading and Stormwater Codes will sufficiently mitigate adverse impacts to the environmentally critical areas. The SDCI analysis is supported by the testimony of SDCI Senior Civil Engineer Rob McIntosh and by the information in Exhibits 80 – 86. Exhibits 80 – 82 (applicant soils reports) show that the steep slope on the property was created entirely by placement of fill dirt at various times in the past. Such a slope, created by "previous legal grading," is not subject to the non-disturbance standards in the ECA regulations at former Section 25.09.180.B.2.b. In fact, the testimony and exhibits were that removal of this unstable fill was the most appropriate engineering approach to achieve stability for construction.²

As shown in Exhibits 83 and 84, two of SDCI's geotechnical engineers, Mr. McIntosh and his colleague Jim Mattoon, both reviewed the site to determine if the steep slope qualified for relief from development standards of Section 25.09.180.B.1 (the requirement that development on steep slopes is generally prohibited). Both reviewers concluded that the slope was created by previous legal grading.

² Appellant's witness Mr. Steinbrueck argued in his testimony that the project did not "respond" to the hillside but simply proposed to remove it. However, since the property is overlaid by unstable fill and the slope is formed by the edge of that fill, the removal of the slope is a better way to achieve slope stability than to build a structure on top of or with foundations partially within the fill. It is unlikely that SDCI would approve such a project.

Mr. McIntosh also testified, with reference to Exhibit 61 (MUP plan set, Sheet SH1.00) that the shoring system proposed for the project assured site stability, which addresses any potential significant adverse impact from soil removal and is designed to keep all soil on site. This testimony is supported by the applicant's expert witnesses, engineers Joe Taflin and Sandro Kodama, who presented further testimony about the project's compliance with the steep slope regulations and that the construction methods proposed for the project were appropriate to the site. The appellant did not challenge the steep slope determinations or present any evidence to contradict them.

There is no evidence that the project as proposed will have any probable significant adverse impact to the environment due to soils or grading issues. No additional conditioning is warranted pursuant to SEPA policies concerning earth. (SMC 25.05.675.D).

With respect to drainage and water runoff issues, SDCI presented the testimony of Ede Courtenay, Manager of SDCI's drainage review team. Ms. Courtenay testified that it is not SDCI practice to conduct a full drainage review during the MUP review stage of a project. Full review is conducted during review of the building permit application, which is a separate application from the MUP project under appeal. The basis for this practice is that a full review at the MUP stage would limit SDCI's ability to require changes to approved drainage plans at the later building permit stage. This practice is consistent with SDCI's administration of all technical codes. The specific review is required at the building stage, when much more detailed plans are submitted for construction, and this avoids "pre-approval" at the more conceptual MUP stage.

Ms. Courtenay further testified that the City had addressed the causes of the 2006 flood event in Madison Valley. This event was testified to by appellant's lay witnesses Kevin Murphy and Tony Hacker, as well as Tom Spangenberg, an engineer with experience in water resources, hydrologic engineering and stormwater engineering. Ms. Courtenay testified that Seattle Public Utilities had constructed new detention facilities since 2006 providing "millions of gallons of attenuation" and reducing potential for any combined sewer overflows. She specifically took issue with Exhibit 19 (Navix Stormwater Drainage Report) offered by appellant, and its assertion that stormwater overflow my flow to the street. Projects are not allowed to build systems that discharge to the street. The water would always go to an overflow pipe. SPU has assured SDCI that there is adequate drainage capacity in the neighborhood. Ms. Courtenay's testimony is supported by the testimony of applicant's witness Joe Taflin.

While Mr. Spangenberg also offered extensive testimony and raised questions about stormwater and drainage, he did not directly address the work conducted by SPU since 2006 and admitted that he had never designed a stormwater system or modeled the drainage condition in Madison Valley. While raising some questions about the size of existing drainage pipe in both Madison Street and Dewey Place, he acknowledged that he had no reason to doubt that the project meets City code.

All concerns raised by Mr. Spangenberg about drainage and groundwater flow are subject to SDCI review at the building permit stage. There is no reason to think that the City's Stormwater

Code will not be fully complied with by the project and or to conclude that probable significant adverse environmental impacts are not fully addressed by existing City codes such that no additional mitigation is warranted.

SDCI correctly determined no further mitigation is warranted pursuant to SMC 25.05.675.C or SMC 25.05.665 since the City's Stormwater Ordinance provides authority and regulations intended to mitigate potential drainage impacts.

6. Additional testimony provided about noise, wildlife, construction impacts, and shadowing do not demonstrate probable significant adverse impacts and were reasonably countered by the applicant.

Appellants' witnesses Mr. Hacker, Andrew Kirsh, and Wallis Bolz testified about various issues related to noise, wildlife, construction, and shadowing that they considered impactful. Construction impacts are specifically conditioned by the SDCI land use decision (Condition No. 2 on page 32 of Exhibit 14). There is no basis for additional conditioning beyond the standard construction management plan. Noise issues are addressed by the City's Noise Ordinance and, again, are not unusual. Applicant's witness Bill Stewart testified that the project would comply with the City's noise regulations.

Mr. Kirsh raised questions about the wildlife presence on the property, particularly birds, but admitted that none of the birds observed were endangered. As with noise, the applicant countered with testimony from Jim Keany, an experienced ecologist (see Exhibit 104), who conducted a habitat assessment of the property (Exhibit 53). It is undisputed that the property is not mapped as a fish and wildlife habitat critical area under the City's ECA regulations, SMC Chapter 25.09. There is no persuasive evidence of significant adverse environmental impacts to wildlife.

With respect to potential shadow impacts from the project raised by the testimony of Ms. Bolz, the applicant provided expert testimony from architect Charles Strazzara and information in Exhibit 149, pages 32-34, indicating modest shadow impacts. There is no persuasive evidence of significant adverse environmental impacts due to shadowing.

Interpretation

The appellant did not specifically contest the findings or conclusions of the Code interpretation but instead focused on whether, even if the City regulations were correctly applied to the project, there was still evidence of probable significant adverse environmental impacts that required additional mitigation under SEPA. Generally, the SEPA overview policy (25.05.665.D) applies, and City codes adopted to address a specific environmental impact are presumed adequate to achieve mitigation.

In the interpretation, the appellant challenged the determination that the steep slope qualified for relief from prohibition on development and whether other ECA regulations concerning vegetation removal in ECA's were met, and whether development was restricted to the most environmentally suitable, naturally stable, and least sensitive portions of the site. The

interpretation also challenged the height measurement calculations. The basis for relief from prohibition on development in the steep slope is well documented by the interpretation itself (Exhibit 87), by the permits issued for the subject property authorizing grading (Exhibits 89 – 91) and by the historic Seattle Engineering Department street grade profile (see Exhibit 92 and Exhibits 80 – 82). Further, the applicant submitted exhaustive documentation of the history of the site and immediate vicinity (Exhibit 93). Since the steep slope is created by legal grading, it can be disturbed and developed. The ECA Code contemplates, under these circumstances, that regulatory restrictions on development and vegetation removal do not apply (see conclusions 4 through 6 of Exhibit 87).

As explained in Conclusions 7 through 9 of the interpretation, the average grade height measurement technique of the Land Use Code was correctly calculated and applied to the site. The appellants also provided testimony that they considered some slightly different measurements of the height that resulted in very minor changes to the overall calculations. Any SEPA impacts from height are mitigated by the design review process as previously explained. The zoning of the property contemplates a development of considerable size that will necessarily be taller on the downhill side of a sloped property.

Conclusion

The appellants have not met their burden to demonstrate that the SDCI decision on Design Review or SEPA is clearly erroneous or that the SEPA review failed to mitigate any significant adverse impacts, particularly traffic, parking, height, bulk and scale, impacts to trees, drainage, or slope stability. The SDCI project decision and related interpretation were correctly analyzed. Accordingly, the SDCI decisions should be affirmed.

Entered this 20th day of February, 2019.



William K. Mills, Land Use Planner Supervisor
Department of Construction and Inspections

cc. Claudia M. Newman and Bryan Telegin, for Appellant Save Madison Valley
Jeremy Eckert and Patrick Mullaney, for Applicant TVC Madison Co. LLC

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) **Certificate of Service**

The undersigned certifies the following:

1. I am a Land Use Planner Supervisor at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above-entitled appeal proceeding; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Wednesday, February 20, 2019, I delivered SDCI's Closing Statement, by e-mail and only, to the following named parties:

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Both e-mail copy and hand delivered hard copy of SDCI's Closing Statement are provided to the Office of Hearing Examiner.

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

DATED this 20th day of February 2019.



William K. Mills, Land Use Planner Supervisor, SDCI

cc. Claudia M. Newman and Bryan Telegin, for Appellant Save Madison Valley
Patrick Mullaney, for Applicant TVC Madison Co. LLC

