

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

SAVE MADISON VALLEY

from Approval of a land use application
and a land use interpretation
by the Director, Department of
Construction and Inspections

Hearing Examiner File:
**MUP 18-020 (DR, W)
& S-18-011**

**ORDER DENYING
RECONSIDERATION**

The Director of the Department of Construction and Inspections (“Department”) issued a State Environmental Policy Act (“SEPA”) Determination of Non-Significance (“DNS”) and design review approval for construction of a six-story structure (“Decision”) at 2925 E. Madison Street. Save Madison Valley, a citizens’ group, (“SMV” or “Appellant”) timely exercised its right to appeal the Decision and DNS. The Appellant also appealed a Land Use Code Interpretation (“Interpretation”) issued by the Director related to the proposal subject to the DNS and Decision. The Code Interpretation was affirmed in a decision by the Deputy Hearing Examiner (“Examiner”) in an “Order on Motion to Dismiss” dated November 19, 2018 and the appeal of that decision was dismissed.

The appeal hearing was held on December 10, 11, 12, 13, and 17, 2018 and February 5 and 6, 2019, before the Examiner. The Examiner issued the Findings and Decision in this matter on February 26, 2019.

The Department filed a timely motion for reconsideration requesting that the Examiner reconsider portions of the Findings and Decision in the subject appeal addressing shadow impacts under SEPA. The Appellant filed an opposing response to the motion. The Applicant, the Velmeir Companies (“Applicant”), did not participate in the briefing.

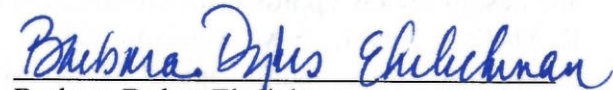
Procedural Basis

The Hearing Examiner Rules of Procedure (“HER”) 3.20.2 allows for reconsideration if the movant shows “[n]ewly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing . . .” The Department provides as “newly discovered evidence” a “Memorandum of Agreement Regarding P-Patch Community Gardens on SDOT Right-of-Way Between the Seattle Department of Transportation and the Department of Neighborhoods” (“MOA”) signed in September 2017. The Department argues that the MOA provides that P-Patches are of a temporary nature, whereas “parks and open space” as defined in the Land Use Code and relied on by the Examiner in Conclusions 39-42 are of a “permanent” nature.” The Department also attaches to its motion a map that is a copy of the City’s Geocortex map of the Mad P-Patch.

The Department acknowledges that none of these materials are “newly discovered evidence” but claims there was nothing in the testimony or exhibits that would have caused the Department to research its existence prior to receipt of the Hearing Examiner Decision. *SDCI’s Motion for Reconsideration* at 2. The Examiner disagrees with that statement, as the testimony of Wallis Bolz on December 12th and 13th focused heavily on the issue of shadow impacts to the Mad P-Patch. As documented by the very thorough opposition brief supplied by the Appellant, the Department also had plenty of notice of this argument even before the hearing started.

The Department’s motion for reconsideration is **DENIED** and all evidence attached to the motion for reconsideration is ordered **STRICKEN FROM THE RECORD**, including Attachments A and B to “SDCI’s Motion for Reconsideration,” filed March 7, 2019.

Entered this 22nd day of March, 2019.



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order Denying Reconsideration** to each person listed below, or on the attached mailing list, in the matters of **Save Madison Valley**. Hearing Examiner Files: **MUP-18-020 (DR, W) & S-18-011** in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Claudia Newman newman@bnd-law.com cahill@bnd-law.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel Jeremy Eckert jeremy.eckert@foster.com Patrick Mullaney patrick.mullaney@foster.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: March 22, 2019



Bonita Roznos
Executive Assistant