

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by

GRANT PROTECTION FOR TREES, *et al.*,

of Decisions Re Land Use Application and  
Code Interpretation for 2813-2815 4<sup>th</sup> Ave.  
West

Hearing Examiner File  
MUP-19-004 – MUP-19-015

3029801-LU & 3030630-LU

**IVY ARAI TABBARA'S CLOSING  
STATEMENT**

Pursuant to the Hearing Examiner's instruction at the Hearing (July 26, 2019), Appellant Ivy Arai Tabbara submits the following Closing Statement:

**I. CLOSING STATEMENT**

Seattle is booming. To manage this boom, there are guidelines in place, if applied consistently permit new development while protecting the environment. But in this case, guidelines were skirted, without thorough review, in favor of exemptions. And as a result, an Exceptional Tree will die. The Applicant Developer can still build the same amount of multifamily homes *and* save the tree, but refuses to do so or consider other design alternatives. The bottom-line is not that the Developer cannot maximize his building capacity. Guidelines were bent based on greed.

1 At the outset of the hearing, in an effort to be more efficient and minimize the parties' and  
2 Examiner's resources, I limited my Appeal Issues. But on the first day of the hearing, my central  
3 focus (Issues 2(b)), as stated in my Motion for Reconsideration (July 11, 2019), was rejected based on  
4 lack of jurisdiction. Now ripe for appeal to the Superior Court, I raised a discrete legal issue that the  
5 Multifamily Development on Parcels A & B are one interrelated project and should have been  
6 reviewed as one for SEPA categorical exemptions and design review guidelines. Fortunately, my  
7 Issues 2(a) survived and I argued, as supported by the record, mitigation could have occurred for  
8 significant adverse SEPA impacts to the Exceptional Tree if SDCI had considered the SEPA impacts  
9 as a whole on the Subject Property, Parcels A & B.  
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11 In determining whether a proposed development will have significant adverse impacts, one  
12 relevant factor is whether it will conflict with other laws or requirements for the protection of the  
13 environment. The State SEPA rules explain that "[a] proposal may to a significant degree ... [c]onflict  
14 with local, state, or federal laws or requirements for the protection of the environment." WAC 197-  
15 11-330(3)(e)(iii). Additionally, the SDCI Director Decision (Ex. 4) with respect to SEPA and  
16 Design Review for this Multifamily Development falls within the purview of SMC 23.53.015A,  
17 SMC 23.41.018, SMC 23.41.012, SMC 23.76.022, SMC 25.05.060, SMC 25.05.792, 25.05.330,  
18 SMC 25.05.660, 25.05.675, SMC 25.11.070A.3, and SMC 25.09.090B.  
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20 To start, the following critical facts are undisputed:  
21

- 22 • An Exceptional Tulip Tree is thriving on the Subject Property. *See, e.g.* Ex. 4 at \_\_\_\_  
23 (Director's Decision); Art Pederson Testimony and Ex. 9 (Shoffner Report); Stuart Niven  
24 Testimony and Ex. 11 (Niven Report); Alan Haywood Testimony and Ex. 36 (Haywood  
25 Report).  
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- The Director's Determination of Non-Significance found "[t]he two development sites are functionally related due to shared pedestrian access and parking." Ex. 4 at 1.
- Applicant Curtis Bigelow wrote to the City permit process leader, "the two sites are 'functionally related' for both projects." Ex. 55.
- Applicant Curtis Bigelow submitted an SDR Plan for solely Parcel A (2813 4<sup>th</sup> AVE W). And that Plan illustrates shared parking and pedestrian access for Parcels A & B. Ex. 54; Bigelow Testimony.

City guidelines provide that if two or more development proposals under review at the same time are "closely related" then they are treated as single development. Ex. 3 (DR 19-2018). *See also* WAC 197-11-800. The following, among other things, must be true if two or more development proposals are considered as one for applying for SEPA categorical exemptions and Design Review thresholds: (1) shared structures; (2) shared driveway access to parking areas; (3) shared pedestrian access; and (4) shared open space.

Despite strenuous objections by the Developer's counsel, the Developer's own Design Package provides illustrations of the five homes on the Subject Property, both Parcels A & B. Those Parcel plans plainly reveal, among other things, shared parking, shared pedestrian access, and a shared courtyard. Ex. 54. *See also* Bigelow Testimony.

Yet, the Director erroneously bifurcated the review process by parcel, restricting review of further mitigating alternative designs that could save the Exceptional Tree and allow robust multifamily development. Although the Director's Decision attested that Parcel A & B are "functionally related," it applied the heightened Streamline Design Review Process to only Parcel A, which contains the thriving Exceptional Tree. Ex. 4. *See also* Ex. 54 (Developer's SDR Package for solely Parcel 2813 4<sup>th</sup> AVE W). SDCI's own witnesses painted a confused picture of the reasoning



1 behind the appropriate review process and removal of the Exceptional Tree. SDCI Senior  
2 Environmental Analyst, Art Pederson, claimed removal of the Exception Tree on Parcel A was  
3 absolutely necessary so the Developer could maximize his development capacity on that Parcel. *See*  
4 Pederson Testimony. But SDCI's Land Use Planner Supervisor, Bruce Rips, even when pressed by  
5 the Developer's attorney, insisted Streamline Design Review covered *both* Parcels A & B because  
6 *both* are interrelated or functionally related. *See* Rips Testimony. This is not true. And to rehabilitate  
7 this faulty recitation of the Streamline Design Review process, the Developer's own architect, Curtis  
8 Bigelow, testified how he submitted a Streamline Design Review package (Ex. 54) for Parcel A (2813  
9 4<sup>th</sup> AVE W) because the Exceptional Tree on that Parcel triggered the heightened level of review for  
10 that Parcel only. *See* Bigelow Testimony. In order to downplay why his SDR package included  
11 drawings of the three homes on Parcel B (2815 4<sup>th</sup> AVE W), Mr. Bigelow reasoned the purpose was  
12 to provide context. *See* Bigelow Testimony. This "context" actually highlights how Parcels A & B  
13 are closely related. And this conflicting and misguided understanding of the Director's DNS  
14 reinforces how the Streamline Design Review Process did *not* result in sufficient review and SDCI  
15 erred to adequately mitigate the significant adverse impacts under SMC 25.05.675 and consider  
16 alternative designs.

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19       There is no question, reasonable development alternatives exist that mitigate significant  
20 adverse impacts and avoid removal of the Exceptional Tree. Architect, David Moehring, provided  
21 various draft alternate design plans that allow for significant development on both Parcels and save  
22 the Exceptional Tree. *See* Exs. 5-7; Moehring Testimony. The Developer submitted one alternative  
23 design in its SDR Package that only looks at Parcel A, not the Subject Property as a whole. Ex. 54 at  
24 11. That one alternative still allows for five multifamily homes. *Id.* But they are not big enough in  
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1 order for the Developer to maximize his profit? Alternative designs not only exist, but should have  
2 been considered by SDCI in assessing sufficient mitigation of significant adverse impacts.

3 To be clear, I am not against new development on the Subject Property. Multifamily homes  
4 can be built, and the City can also preserve a rare tree, it deems "exceptional." This Subject Property  
5 deserves further review by not only SDCI, but by the Examiner. In support, the many pictures of the  
6 Subject Property and Exceptional Tree entered in the record (*i.e.*, Exs. 39, 54) do not convey the  
7 uniqueness of the Property and surrounding environment. If possible, I respectfully urge the Examiner  
8 to do a site inspection under HER 2.19.  
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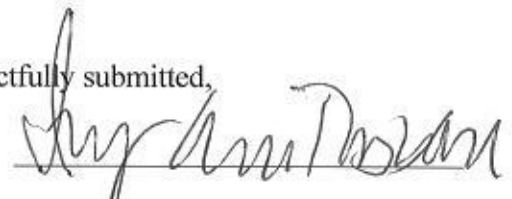
## 10 II. CONCLUSION

11 I respectfully request that the Examiner remand recommending SDCI, in exercising its  
12 substantive authority, collect and assess additional information, including alternate design plans, that  
13 consider the SEPA impacts and mitigation as a whole on both Parcels together.  
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15 Dated this 2<sup>nd</sup> day of August, 2019.

16 Respectfully submitted,

17 By:



18 Ivy Ara Tabbara  
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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: Ivy Arai Tabbara's Closing Statement to each person listed below, or on the attached mailing list, in the matter of *Grant Protection for Trees, et al.*, Hearing Examiner File: MUP-19-004(W) – MUP-19-015(W) by electronic mail.

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DATED: August 2, 2019.

A handwritten signature in black ink, appearing to read "Alex Mason", written over a horizontal line.