

THE HEARING EXAMINER OF THE CITY OF SEATTLE

MAGNOLIA COMMUNITY COUNCIL,)	
MIKE APPEL, M. JEANNE COULSON,)	
EDWARD R. COULSON, DEBBIE)	
MULLINS, JONATHAN E. MULLINS, and)	
JANIS TRAVEN,)	
)	No.
Petitioners,)	
)	APPEAL OF ANALYSIS,
v.)	RECOMMENDATION AND DECISION
)	OF THE DIRECTOR
CITY OF SEATTLE,)	MUP No. 3028072-LU
)	
Respondent.)	
)	

Petitioners, Magnolia Community Council and others listed above (collectively, “MCC”) bring this appeal to prevent and to correct the Decision’s failure to mitigate adverse impacts and protect the unobstructed, panoramic public view at the Ursula Judkins Viewpoint (“UJV”).

I. DECISION BEING APPEALED

1. Matter being appealed

MCC appeals the Analysis, Recommendation and Decision of the Director, MUP Number 3028072-LU (the “Decision”).

2. Property Address

2500 W. Marina Place (the “Property”)

3. Elements of the decision being appealed

MCC objects to the Department’s review of the project that is the subject of the Decision (the “Project”) as though it is exempt from SEPA, and MCC appeals the Decision’s failure to impose reasonable conditions that mitigate the adverse impacts of the proposed non-residential development and use of the Property.

II. APPEAL INFORMATION

1. MCC's interest in the Decision

Founded in 1924, the Magnolia Community Council is one of the oldest and most consistently active community organizations in the City of Seattle. Its mission is to maintain a vigilant awareness of activities that affect the interests of its community by identifying and participating in the public process to protect those interests. The other appellants listed below are homeowners in the Magnolia neighborhood bordering the Property.

2. Background of Ursula Judkins Viewpoint

UJV is immediately adjacent to the northern boundary of the Property. Seattle Parks and Recreation acquired the 3.89-acre park in 2003 as part of a 7.3-acre acquisition from the US Navy in cooperation with King County. UJV is named in recognition of the community contributions of Ursula Judkins, a lifetime, passionate activist responsible for many community improvements, including reducing impacts of the West Point sewage treatment plant, resolving railroad noise in Interbay, and protecting Discovery Park, and who served for a time as the president of MCC. She died in 2000 and the viewpoint was later named in her honor.

3. MCC's objections to the Decision

Even though the applicant prepared and submitted a SEPA checklist, and even though the proposed new structures substantially exceed the SEPA threshold for non-residential uses in Table B of SMC 25.05.800, the Department deemed the Project to be SEPA exempt. MCC recognizes that the Hearings Examiner may not have jurisdiction to reverse the Department's decision that the Project is SEPA exempt, but the Department's failure to take into account the obvious non-residential use of the Property is reflected in its failure to impose conditions to mitigate the adverse impacts of that non-residential use. The Decision also ignores deed restrictions, conditions, and view covenants, public comments and other considerations that protect the UJV public view and fails to impose conditions that would mitigate the Project's future adverse impacts to the UJV public view. Without reversal and modification, the Decision contains absolutely no protection for that view and assures that the public view will be

increasingly blocked until it is completely eliminated in a short period of time. The Decision also fails to impose conditions to mitigate other adverse impacts of the Project.

a. The Project is not exempt from SEPA

“Beware of a wolf in sheep’s clothing” says the old biblical proverb. As explained below, it appears that Global Seas has come before the Department as a wolf of non-residential use dressed in sheep’s clothing of residential use. The evidence demonstrates that the primary intended use of the Property is to support Global Seas’ business using the Admiral’s House as a successful and popular event and wedding venue. Global Seas’ online marketing materials for the Admiral’s House highlight its sweeping views, numerous awards, post stunning pictures of elegant setups, and note its ability to accommodate 30-250 guests.

(<https://www.theadmiralshouse.com/>, last visited May 6, 2021.) It is not difficult to imagine the tremendous boost that business would receive by offering two buildings for rent of the size, amenities and location proposed to its potential customers. Because this use strays far from the “residential uses” envisioned in SMC 25.05.800, Table A, and the non-residential use exemption limits development to a maximum of 4000 square feet, the Department should not have determined the Project was categorically exempt.

There are many aspects of the Project that indicate a non-residential use of the buildings. Strikingly, the underground shared garage has parking spaces for 13 vehicles, an extraordinary amount of parking even by megamansion standards but very attractive if the ten combined bedrooms are occupied by the families of the bride and groom participating in a wedding. In addition, the shared aspect of many of the amenities, such as the plazas, pool, and walkways, would be most attractive to potential tenants that already know each other, as opposed to high end and resident owners that would expect a great deal of privacy to enhance enjoyment of the amenities. Indeed, rather than any separation by buffers, siting, or design of the structures to provide typical and desirable separation, the plans depict only an “imaginary property line” to separate the two structures.

The true ownership of the Property has been obscured by the misleading concept of local, individual owners of the Property. During the one public meeting conducted, Global Seas' architect stated that the Property was owned by Bob Desautel and Walter Kuhr and their families, and that they work at the Admiral's House. Documents from SDCI and others continually refer to "Bob Desautel" as the property owner. (See, e.g., SDCI Correction Letter, 12/20/19.) The actual owner of the Property is Oceanstar LLC, whose only member is Nina Fisheries, Inc. Global Seas apparently conducts the event business of the Admiral's House, along with being "an internationally diverse entity with a portfolio of investments spanning the globe." (<https://www.globalseas.com/company/about-global-seas/>, last visited May 5, 2021.)

On the SEPA Checklist that the applicant submitted before the Department decided the Project was SEPA exempt, the project architect avoided a direct answer to Question A-11's inquiry for the proposed uses of the Project, referring instead to their structure, "Two single family residences" and later answered a question regarding the approximate number of people to reside in the completed project as "6" (Question B.8.i) and that the Project would generate a mere "4" trips per day (Question B.14.f).

There are obviously stark differences in the adverse impacts and the need for SEPA review between residential and non-residential uses. If the Project's use is a nightly adjunct to the Admiral's House event business, the answers to the SEPA checklist would be radically different in many ways, such as traffic and the impact of turning the UJV parking lot into an easily accessible loading dock for event vendors or overflow parking for guests.

The evidence in the record demonstrates the Department's grant of a categorical exemption is clearly erroneous and should be reversed. If, in fact, Global Seas does not intend to use the proposed buildings for non-residential uses, Global Seas should agree to a condition prohibiting non-residential use and the SEPA exemption would be appropriate. If not, the evidence demonstrates the need under SMC 23.42.042 for the Department to mitigate adverse impacts by imposing a condition that restricts the Property's non residential use and for the Hearing Examiner to modify the Decision to do so in this appeal.

b. The Decision fails to consider specific deed restrictions, conditions, and view covenants related to the Property

SMC 23. 42.042(B) provides that in authorizing a conditional use, the Director may impose conditions to mitigate adverse impacts on the public interest, which here would include the UJV public view. Those conditions should consider the specific restrictions, conditions, and view covenants that developed over the history of the Property, which the Decision does not do. The Decision also ignores public comments requesting protection of the UJV public view. The Property was originally owned by the U.S. Navy, which in 1944 had constructed the iconic, Revival style residence known as the “Admiral’s House” to house the resident commander of the 13th Naval District and for formally entertaining government, military officials, foreign dignitaries, and other official functions. Eventually, the Navy determined that, due to declining force allotments and budget reductions, the Property was excess and should be sold. Keenly aware of the historical and environmental impact of the Property, the Navy imposed historical preservation and environmental conditions that would bind successor owners of the Property. Before transferring the Property to Pacific Northwest Communities, LLC (“PNC”), a public/private partnership to handle the disposition of the Property, the Navy required PNC to submit applications for an Historic Landmark designation and negotiate view protections for UJV. The Quit Claim Deed transferring title to PNC contained a view protection covenant as follows:

I. VIEW PROTECTION. GRANTEE covenants that it will negotiate a view corridor easement or covenant overlooking landscaping and vegetation located on a portion of the Property from the Ursula Judkins viewpoint lying north of the Property with the Seattle Parks and Recreation or, if negotiations are unsuccessful, take other appropriate action to create a view corridor consistent with the City of Seattle’s ordinances governing tree trimming, limbing and removal.

The Quit Claim Deed was recorded on October 5, 2012.

Thereafter, PNC listed the Property for sale and began negotiations to sell the Property to Oceanstar, LLC, as well as finalizing the view restriction called for in its deed from the Navy.

PNC prepared, a “View Corridor and Landscape Maintenance Covenant” that was recorded and

then re-recorded on June 13, 2013 (“View Covenant”). The View Covenant, which by its terms, runs with the land, protected the UJV public view over the Property by dividing the land between UJV and the Admiral’s House into five zones, starting with Zone 1 at the boundary of UJV and the Property limiting vegetation in that zone to a maximum of three feet.¹ PNC transferred the Property to Oceanstar, LLC, by a Statutory Warranty Deed, specifically subject to the restrictions of the View Covenant, recorded on June 21, 2013.

At the request of 50 or more members of the public after notice of Global Seas’ conditional use application was published, the City conducted a meeting for public comments on the application in September 2019. At that meeting, representatives of Global Seas, including its architect, made statements and answered questions. The architect for Global Seas stated that the owners, who did not attend the meeting, were Bob Desautel and Walter Kuhr, and that they were committed to stabilize the slope, replace vegetation with all-native varieties, and protect the views of UJV. Global Seas’ architect also emphasized the owners’ local connections to the Property, stating both owners worked at the Admiral’s House and noted their investment in the community. (Public Comment: David Moehring, 10/04/19.)

The Decision completely ignores these recorded restrictions and representations. Furthermore, Global Seas’ submittals call for a planting buffer of over 25 *Amelanchier alnifolia* trees, 6 feet in height, on top of the retaining wall at the boundary of the Property with UJV. Global Seas submits a depiction of these trees in place, which shows a small obstruction to the public view of UJV. However, the height of these trees, located in Zone 1, violates the 3’ maximum height of the View Covenant. (Exhibit1.)

Exhibit 1 is fundamentally misleading. These trees, *Amelanchier alnifolia*, typically grow to a height of 26 feet, and possibly as high as 33 feet,² which will TOTALLY obstruct the UJV public view. A depiction of the trees at a height of 20 feet is attached as Exhibit 2.

¹ Permissible maximum vegetation heights increased going downhill, so that Zone 5, next to the Admiral’s House itself, allowed a maximum height of 31 feet.

² https://en.wikipedia.org/wiki/Amelanchier_alnifolia, last visited May 6, 2021.

The Decision considered none of these factors, despite evidence in the record, and there is no mention of them in the Decision. At the very least, the Decision must be modified to impose conditions that preserve the strong public interest in the dramatic public view from UJV.

c. The Decision fails to impose conditions to mitigate adverse impacts

SMC 23.42.042 requires discretion of the Director to impose conditions to mitigate adverse impacts on the public interest in approving a conditional use. The UJV public view and access are squarely within the public interest and justify additional conditions.

In addition to seeking a restriction on the height of the proposed tree buffer between the Project and UJV, the Decision should include requirements to regrade UJV with higher and consistent pedestrian and bike access, providing a higher vantage point in UJV and further mitigation of the Project's adverse public view impact.

The Project should be conditioned on the removal of the proposed north side exterior stair access from the Project to UJV. This access threatens to unreasonably burden UJV in the form of increased vehicular and pedestrian traffic as it is used by event vendors and guests connected to Global Seas' event business.

UJV and the Property are likely to be affected by the Seattle Department of Transportation's plans to replace the Magnolia Bridge. A Memorandum of Agreement (MOA) was signed in 2011 among the City, SDOT, and the prior owner (PNC) of the Property that requires surveys and possible repairs and protections of the Property to mitigate impacts on it. Conditions should be added to insure the construction and use of the Property comply with the MOA and do not adversely impact SDOT's vital work to accomplish the direly needed replacement of the Magnolia Bridge.

The Decision does not meaningfully address the impact of the Project on the Admiral's House. The Decision should be modified to require advance approval of the Landmarks Preservation Board pursuant to SMC Chapter 25.12.

III. AUTHORIZED REPRESENTATIVE

The authorized representative for the Magnolia Community Council and the individual appellants is Edward R. Coulson, 1522 Thorndyke Avenue W, Seattle, WA 98199, 206-953-2579, coule@schweetlaw.com.

IV. RELIEF REQUESTED

MCC respectfully requests that the Hearing Examiner reverse and modify the Decision to impose conditions pursuant to SMC 23.42.042 to: 1) restrict the non-residential use of the Property; 2) insure adequate protection of the public view at UJV; 3) regrade UJV; 4) remove the north side exterior stair access; 5) comply with the MOA and SMC Chapter 25.12; and 6) award such other relief as the Hearing Examiner determines authorized and appropriate.

Respectfully submitted this 6th day of May, 2021.

MAGNOLIA COMMUNITY COUNCIL

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Developer's Rendering of New buffer.

EXHIBIT 1



EXHIBIT 2