

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of)	
)	Hearing Examiner File:
MAGNOLIA COMMUNITY COUNCIL)	MUP-21-016 (ECA CUP)
AND OTHERS)	
)	Department Reference:
from a decision issued by the Director,)	3028072-LU
Seattle Department of Construction)	
and Inspections.)	MCC'S REPLY TO SDCI CLOSING
)	STATEMENT
_____)	

I. ARGUMENT AND AUTHORITY

SDCI Closing Brief (SDCI's Closing) makes conclusory assertions about the law and the facts, unsupported by analysis or citation. It is written as if the hearing had not happened and as if the Hearing Examiner had not issued her pre-hearing Order on Applicant's Motion to Dismiss.

MCC does agree with SDCI about its statement on page 3 of SDCI's Closing: "SMC 25.09.260(A) states 'In Single Family zones the Director is authorized to approve an environmentally critical administrative conditional use pursuant to Section 23.42.042 and this Section 25.09.260.'" SDCI's Closing, p. 3. SDCI's Closing, however, demonstrates its disregard of this language. The language that SDCI quotes requires SDCI to it apply 23.42.042 as well as 25.09.260 when making decisions about conditional use permits in critical areas. It is error of law for SDCI to disregard the language of the code that it is responsible for administering, as well as an abuse of discretion for SDCI to refuse to exercise the discretion that the Council has delegated to it.

SDCI's Closing states:

The code authority under SMC 25.09.260 does not enable the Director to impose additional mitigation pursuant to SMC 23.42.042 related to tree

heights, views from Ursula Judkins Viewpoint Park, private stair access to Park property, and the Admiral's House. These concerns are not and cannot be addressed as part of the Director's review of the project.

Id. at pp. 3-4.

SDCI offers no analysis or authority for this assertion. The Decision applies SMC 25.09.260 as if subsection A.1 did not tell SDCI to make a CUP decision about development in a critical area "pursuant to 23.42.042." SDCI does not have the authority to administratively delete language from a legislatively enacted code.

SDCI's Closing is not only written as if the hearing had not happened and as if the code does not say what it says, SDCI's Closing is written as if the Hearing Examiner had not made rulings before the hearing started. SDCI writes: "The Director did not review specific deed restrictions, conditions, and view covenants on this property because they are not enforced by the City are [sic] beyond the scope of review of this project." *Id.* at p.3. Oceanstar argued in its Motion to Dismiss that claims about the view covenant (MCC Exhibit 4) should be dismissed because it was a private covenant unenforceable by the Hearing Examiner. The Examiner rejected this argument, ruling that the covenant may provide "relevant context" to address the Decision's consistency with SMC 23.42.042(B). MTD Order, p. 2. This Order followed the Decision, but SDCI's Closing admits it did not reconsider the view covenant in light of the Hearing Examiner's MTD Order, which confirmed that this document is relevant to the analysis SDCI was required to make.

II. CONCLUSION

Ursula Judkins Viewpoint is part of Seattle's original Olmsted Parks legacy to preserve open spaces and natural land for the perpetual enjoyment and benefit of the public. Its namesake was a tireless community advocate dedicated to protecting public interests and lands. MCC has proven at the hearing the significant adverse impacts to UJV and its view, and to the "prominence of spatial location" of the landmark Admiral's House. SMC 25.12.350.F SDCI's failure to apply SMC 23.42.042 is legal error, and its failure to exercise its discretionary authority is an abuse of discretion. SDCI's Closing provides yet more reason for the Examiner

to deny Oceanstar's application, or to reverse and remand the Decision with instructions that SDCI make a new decision "pursuant to SMC 23.42.042," as required by both 25.09.260.A.1 and 23.42.042.A.

DATED this 12th day of October, 2021.

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PROPOSED VIEW FROM URSULA JUDKINS PARK

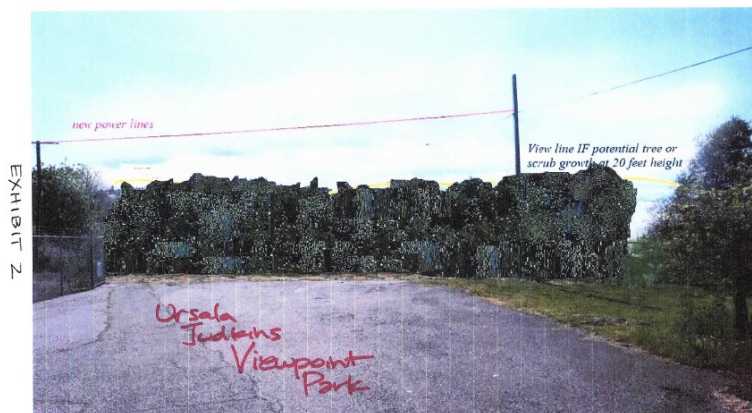
From photo perspective at upper parking lot location:

TEMPORARY result under CUP:
Buildings and 24 newly planted Amelanchier Alnifolia buffer trees partially obstruct UJV view

From UJV south property line:

PERMANENT result under CUP:
Buildings, with or without newly planted buffer trees, block 100% of UJV view

D. Moerhing testimony, Day 2,
Part 4, 24:45, City Exhibit 4, p. 19



Forecast after years of buffer growth.

From photo perspective at upper parking lot location:

PERMANENT result under CUP:
24 buffer trees grow to 20-30' height (K. Kiest, K. Stamm, C. Carr testimony), to completely obstruct UJV view (K. Kiest, D. Moehring testimony)

The UJV view will be "obstructed"
C. Carr testimony, Day 3, Part 1, 1:29:10

UJV Appeal, Exhibit 2

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 October 12, 2021, I caused to be served the foregoing document, upon the following individuals, in the manner indicated below:

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DATED this 12th day of October, 2021, at Seattle, Washington.

s/Nikea Smedley

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