

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 MOTION FOR
)	RECONSIDERATION/CLARIFICATION
_____)	

I. INTRODUCTION AND RELIEF REQUESTED

Appellants MCC and Others bring this motion for reconsideration pursuant to Hearing Examiner Rules of Practice and Procedure 3.20(a)(1), asking the Hearing Examiner to reconsider and clarify her ruling because MCC and SDCI cannot agree on whether it requires a new MUP decision after remand.

The final paragraph of the Decision states:

The Department's ECA CUP Decision is upheld in part and reversed in part, with direction to the Department to further consider the MUP as it relates to landscaping consistent with this Decision, including Conclusion 7. The parties should coordinate as feasible to resolve these issues.

MCC interprets this Decision to mean SDCI is required to exercise its discretion to protect the Ursula Judkins Viewpoint (Viewpoint) view and publish a new MUP decision that reflects such exercise of discretion. SDCI agrees it is required to exercise its discretion and protect the Viewpoint view, but SDCI will not commit to publishing a new MUP on remand, thereby jeopardizing MCC's appeal rights to both the Hearing Examiner and superior court.

MCC submits that there is an "irregularity in the proceedings" unfair to MCC that justifies reconsideration when a decision that "reverses" a MUP decision is interpreted by SDCI to give it the authority to authorize the applicant to proceed without issuing a new MUP decision. The

Examiner's reconsideration and clarification of the Decision is necessary to prevent this unfair result.

II. FACTUAL BACKGROUND

As explained in the accompanying Declaration of Edward R. Coulson, he called Michael Houston, SDCI's planner, on October 21, 2021, in response to the Hearing Examiner's direction in the Decision that the parties "coordinate as feasible to resolve" issues. Mr. Coulson explained MCC's concerns to Mr. Houston and asked for SDCI's confirmation that it would publish a new MUP in compliance with the Decision. Mr. Houston said he was still reviewing the Decision but would discuss MCC's concerns within SDCI. Declaration of Edward R. Coulson in Support of MCC's Motion for Reconsideration/Clarification, ¶ 3.

After several discussions and emails with Mr. Coulson, Mr. Houston stated there might be outcomes where SDCI would not publish a new MUP decision and therefore SDCI would not commit to do so. Instead, he wrote an email that stated SDCI "will likely publish a new decision." A copy of this email exchange is attached as Exhibit 1 to the Coulson Declaration. This statement creates an unacceptable risk that MCC could lose its right to appeal SDCI's future actions on remand even though its prior MUP decision has been reversed. *Id.*

III. ARGUMENT AND AUTHORITY

A MUP decision that has been reversed on appeal requires a new MUP decision. In this case, a new landscape plan by itself does not ensure that the view will be protected in the future. The Hearing Examiner's Decision determined that SDCI's MUP decision failed to consider SMC 23.42.042 and does not protect the view from the Viewpoint. The MUP is thus improper and no longer exists, and the Decision instructs SDCI on remand to exercise its discretion and review the adverse impacts of Oceanstar's planned landscaping and fencing and provide greater specificity to protect the Viewpoint view in "the MUP or landscape plan, or possibly in both documents." Decision, p. 9. While a new landscape plan is required, so is a new MUP decision that imposes enforceable limits on future growth and changes to the

landscaping. If SDCI issues only a revised landscaping plan to correct its errors, the views from the Viewpoint will not be protected in the future, even if the new plan protects them in the present. MCC will have no ability to help protect the public view that the Hearing Examiner's decision agrees needs to be protected by the future exercise of discretion under SMC 23.42.042. Such future exercise of discretion by SDCI requires a new MUP decision, and SDCI's refusal to commit to one makes these proceedings irregular and unfair.

MCC submits that the Decision's reversal of the current MUP requires SDCI to publish a new MUP on remand as a matter of law. Otherwise, there would be no approved final MUP that would give SDCI the authority to issue a building permit or take any other actions to allow the Project to proceed. However, as set forth in the factual background, the Decision is being read by SDCI to give it the authority to allow the applicant to proceed without a new MUP decision and thereby deprive MCC of its right to appeal the revisions the Decision requires SDCI to make on remand to protect the public view. That SDCI is reading the Decision in this manner results in an irregularity in this appeal that prevents MCC from having a fair hearing. HER 3.20 (a)(1) allows for a motion for reconsideration to correct such an unfair result. MCC requests the Decision be reconsidered and clarified to *require* a new MUP Decision.

DATED this 29th day of October, 2021.

/s/

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date, I sent true and correct copies of the MCC'S MOTION FOR RECONSIDERATION/CLARIFICATION and DECLARATION OF EDWARD R. COULSON IN SUPPORT OF MCC'S MOTION FOR RECONSIDERATION/CLARIFICATION to each person listed below, in the manner indicated.

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SIGNED this 29th day of October, 2021, in Seattle, Washington.

/s/ _____
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