

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of
MAGNOLIA COMMUNITY COUNCIL AND
OTHERS
from a decision issued by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner File:
MUP-21-016 (CU)

Department Reference:
3028072-LU

**APPLICANT’S RESPONSE TO MCC’S
MOTION FOR RECONSIDERATION**

Appellant Magnolia Community Council (“MCC”) has filed a Motion for Reconsideration (“Motion”) asking the Hearing Examiner to require the Seattle Department of Construction and Inspections (“SDCI”) to issue a new Master Use Permit (“MUP”). The Motion should be denied because the Examiner’s Findings and Decision (“Decision”) appropriately resolves MCC’s appeal issues pursuant to the Hearing Examiner Rules of Practice and Procedure (“HER”).

A. Background

In the Decision, the Examiner determined that landscaping required as mitigation for the project (“Project”) under appeal could cause view blockage if allowed to grow to a certain height and that if “vegetation height requirements were specified, this would resolve the issue.” Decision at 4, 9. “Sufficient detail and specificity to provide necessary assurances could be

1 included in a revised landscaping plan and/or MUP condition(s) added to resolve this.” *Id.* at 9.
2 The Examiner stated further, in Conclusion of Law #7, that “planned fencing including height
3 and degree of transparency should have been considered with the landscape plan so the Project
4 could be reviewed as a whole.” *Id.* at 9. Accordingly, the Examiner reversed SDCI’s
5 Environmentally Critical Area Conditional Use Permit Decision (“ECA CUP Decision”) in this
6 respect, providing “direction to the Department to further consider the MUP as it relates to
7 landscaping consistent with this Decision, including Conclusion 7.” *Id.*¹

9 **B. Argument**

10 In the Motion, MCC asserts that because the Decision directs SDCI to consider certain
11 issues but does not specifically require SDCI to issue a new ECA CUP Decision, there has been
12 an “irregularity in the proceedings by which the moving party was prevented from having a fair
13 hearing,” justifying reconsideration under HER 3.20(a)(1). MCC is wrong. The Decision’s
14 direction to SDCI to consider view and landscaping issues is fully consistent with HER 3.18(d)
15 (“The decision may also include an order . . . directing parties to take action consistent with the
16 decision.”). MCC’s disagreement with how the Examiner chose to resolve this issue does not
17 constitute a procedural irregularity and certainly did not prevent MCC from having a fair
18 hearing. Reconsideration should be denied on this basis alone.

21 MCC also makes two arguments for reconsideration that are equally meritless. First,
22 MCC argues that the Examiner should have required SDCI to issue “a new MUP decision that
23 imposes enforceable limits on future growth and changes to the landscaping.” Motion at 2-3.
24

26 ¹ MCC asserts the Examiner determined “SDCI’s MUP decision failed to consider SMC 23.42.042” and that the
27 Decision “instructs SDCI on remand to exercise its discretion[.]” MCC’s Motion for Reconsideration/Clarification,
28 p. 2. These statements do not appear in the Decision, which speaks for itself.

1 According to MCC, “[i]f SDCI issues only a revised landscaping plan to correct its errors, the
2 views from the View Point will not be protected in the future, even if the new plan protects them
3 in the present.” *Id.* at 3. This argument, which appears to assert that the Examiner should have
4 imposed some kind of restriction on the property, misapprehends the nature of this appeal. The
5 question before the Examiner was not how views will be “protected in the future” but rather
6 whether the City had appropriately examined and mitigated the impacts from *this Project*. See
7 SMC 23.76.022.C.6. The Code does not support MCC’s attempt to use an appeal of the permit
8 to impose restrictions extending into the future, independent of the Project before SDCI.
9 Moreover, even if the Decision could have imposed such restrictions, their lack would not
10 establish a procedural irregularity – only MCC’s substantive disagreement with the Examiner’s
11 conclusion.
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14 Second, MCC argues that is being deprived of its so-called “right to appeal the revisions
15 the Decision requires SDCI to make on remand to protect the public view.” Motion at 3. MCC
16 is not being deprived of any right: if it believes that SDCI’s subsequent actions violate a legal
17 requirement, the Decision does not foreclose any appeal opportunity that may be provided by the
18 Code or other applicable law, either before the Hearing Examiner or before Superior Court. And
19 again, MCC’s disagreement with the nature of the relief provided by the Decision does not
20 establish a procedural irregularity or impact the fairness of the hearing.
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22 **C. Conclusion**

23 For these reasons, the Motion should be denied.
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1 DATED this 5th day of November 2021.

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