BEFORE THE HEARING EXAMINER
City of Seattle

In the Matter of the Appeal of	)	Hearing Examiner File:
	)	
Haris Hodzic	)	**MUP-22-010 (SE, SU)**
	)	
of a decision issued by the Director, Seattle Department of Construction and Inspections, regarding a Land Use Application for a Special Exception.	)	Department reference: Project 3038863-LU
	)	**APPELLANT'S RESPONSE TO SDCI MOTION TO DISMISS**

The appellant, Haris Hodzic, respectfully requests that, pursuant to Chapter 23.88 SMC, the Hearing Examiner does not dismiss the appeal by the appellant in the above-captioned matter.

Under Chapter 23.88 SMC, the Hearing Examiner has jurisdiction over this appeal. In FINDINGS and DECISION document for MUP-16-019 (SE) & S-16-007 Hearing Examiner Tanner states the following, under Conclusions section of the said document:

> "Appeals of interpretations are "considered de novo, and the Examiner's decision is to be made upon the same basis as was required of the Director."

Appellant stated in original appeal the following:

> We would like the Hearing Examiner to reject this proposal on the grounds that the lot that was segregated was not accurately represented. Also the public was not accurately notified of the commenting period (see Exhibit 9[1]) and even after being alerted to this SDCI did nothing to ensure proper public notification as required by law.

This is clearly under the jurisdiction of the Hearing Examiner as the appellant is asking that the decision (also referred to it as proposal in few instances) that was titled in the appeal as "Special Exception - to allow development of a qualified lot less than 3,200 sq. ft. in area in a Single Family zone (SMC 23.44.010.B.3)." be rejected. Appellant also meant that the word "rejected" could be substituted with the word "overturned".

Also if it is not clear what the appellant meant by stating "the lot that was segregated was not accurately represented", we would like to also clarify what "accurately represented" meant.

[1] NOTE: Exhibit 9 in the original appeal document depicts the public notice posted on two electric poles alongside 87th street NW. These notices had an end date for the public commenting period that was a year old and gave the impression that the public commenting period was over a year ago. SDCI never fixed this ignoring the public comment and email communications alerting them to this violation of the proper notice to the public. Also no notices were posted on 28th avenue even though that is the proposed street address for the potential development.

SDCI represented lot 1 as “a qualified lot”. Appellant is disputing this notion that the lot qualifies under any of the SMC Section 23.44.010.B.1.d.

Appellant's understanding is that the fact that the appeal was raised in itself could be interpreted as asking that the decision be overturned. If the appellant fails to state this to the satisfaction of the SDCI, the hope is that the response here will clarify any outstanding items that might not have been clearly communicated in the appellant’s appeal document.

It is the appellant’s hope that the Hearing Examiner will reject SDCI’s Motion to Dismiss as we believe we have enough factual evidence to present that will leave no doubt that SDCI made an error in judgment when they decided to approve the project 3038863-LU.

Background and Argument

As stated by the SDCI in their motion to dismiss this appeal:

> The subject appeal is from a decision by the Director on a land use application to allow development of **a qualified lot** less than 3,200 square feet in area. The application is to allow a single family residence and parking for one vehicle located at 8620 28th Ave NW. The property is zoned Neighborhood Residential 2 (NR2). Notice of publication of MUP No. 3038863-LU was provided in the SDCI Land Use Information Bulletin dated September 22, 2022. A copy of the MUP decision is attached to this motion.

In bold letters in this statement we focus on the words “ a qualified lot”. We are disputing that the lot qualifies under any of the SMC Section 23.44.010.B.1.d.

Under Section 23.44.010.B.1.d, there are three types of public records that are relevant to determining whether property qualifies for the historic lot exception. These records are “deed, contract of sale, platting, or building permit”.

It appears that the department relied only upon the original plat book from 1907 that shows lots 1,2,3 platted separately but were always under common ownership and constituted one single property, with one house built on it in 1915-16. To clarify, Lot 1 was always under common ownership from the abutting lots, with lot 2 being the only bordering lot to the East. Arterial street, 28th ave. NW borders to the west, NW 87th street borders to the North and alley borders to the South.
This is not disputed by appellant, but what is disputed is the fact that subject lot (lot 1) has been reduced to only one third of its original size due to the establishment of the Charles Jacobson road in 1919 (currently 28th ave. NW north from 85th St.). In the original 80 page appeal document containing exhibits and explanation of the historical events proving beyond any doubt that the reduced size of the lot 1 disqualifies it from being considered “established as a separate building site in the public records of the county or City prior to July 24, 1957”.

SDCI claims issues raised with this appeal are somehow outside of scope of the special exception Type II review even though a lot must qualify or the special exception becomes obsolete. Like trying to build floor 29 on the building that only has 5 floors. Maybe somebody should have asked if that building qualifies to have 29 floors before making a decision to build

the said floor 29. Same here. Maybe somebody should have asked if the lot qualifies before making a decision to allow building a house and discussing "limits on the depth of proposed structures and placement of windows".

We have no way of knowing how the lot qualified as the Applicants never obtained the Legal Site Opinion letter. On several occasions they were told by SDCI that by obtaining the letter any questions around legality of the lot would have been answered. Even though they were assuring SDCI they were going to move forward and request the Legal Opinion Site Letter they ultimately never did. This particular fact is also addressed in the response to the Applicant's motion to dismiss this appeal.

SDCI wonders how it is that "none of these issues or the criteria for approval were raised by the appellant". How can we raise any issues with placement of windows if we are trying to point out that "THE LOT DOES NOT QUALIFY" under any of the exceptions under SMC 23.44.010.

SDCI is not clear on "what basis a code interpretation could have been brought to challenge the ownership and chain of title for this parcel" but that is exactly what the SMC 23.44.010.B.1.d, the historic lot exception, requires.

In the SDCI Interpretation No. 16-006, David Graves, Senior Land Use Planner states the following under the "conclusion" section:

> Under Section 23.44.010.B.1.d, there are three types of public records that are relevant to determining whether property qualifies for the historic lot exception. These records are deeds, plat records, and building permits.

Appellant provided the evidence with the appeal document that shows that Order Establishing the Road in 1919 reduced the subject lot down to only one third of its original size and therefore does not qualify as a separate building site based on platting.
Mr. Graves continues further in that interpretation:

> According to SMC 23.44.010.B.1.d.1), "a lot is considered to have been established as a separate building site by deed if the lot was held under separate ownership from all abutting lots for at least one year . . . ." (emphasis added) There is no evidence that Parcel B was held under separate ownership from all abutting lots for at least one year.

Same is true with this appeal; "There is no evidence that the subject lot in this appeal was ever held under separate ownership from all abutting lots for at least one year, prior to 1957".
In similar fashion there are no building permits or deeds proving that the subject lot was ever intended to be a separate building site.
Mr. Graves continues further in the above mentioned interpretation:

> The Historic Lot Exception does not require that we determine the subjective intent of the Coulthards, but it does require that we consider whether the public records reflect that Parcel B was treated as a separate building site. When the owners built their house on the southern portion of their property, they could just as easily have included Parcel B, or even the entirety of the original Coulthard property, in the site description. However, a portion of the property was consciously and deliberately omitted from the site description. By calling out only Parcel A, the owners effectively carved off the remainder of the property. The only logical reason for doing this was to preserve that remainder for separate development.

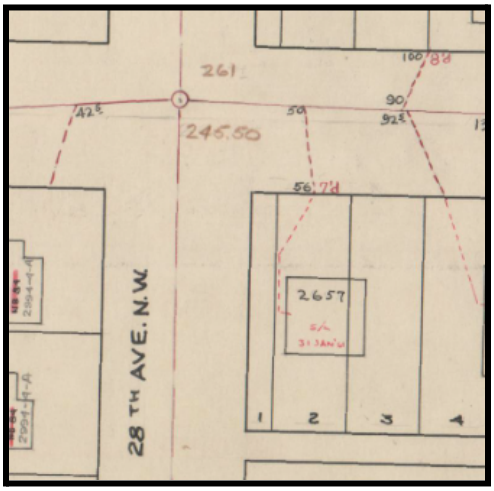
As stated there "The Historic Lot Exception does not require that we determine the subjective intent….., but it does require that we consider whether the public records reflect that <parcel> was treated as a separate building site". Following the same logic as described here when the

original owner of the subject lot, Mr William Schoenfeld purchased the property, lots 1, 2 and 3, he built the house on lots 2 and 3 and never separated lot 1 to be used as an investment or to have an additional or future house there. Unlike in the example from the Interpretation above where the owner deliberately omitted Parcel A from legal description and therefore had it "established as a separate building site in the public records of the county or City prior to July 24, 1957", Mr. Schoenfeld did the opposite. He never separated lot 1 from the legal description which following this logic would disqualify that parcel from ever being considered as "established as a separate building site in the public records of the county or City prior to July 24, 1957".

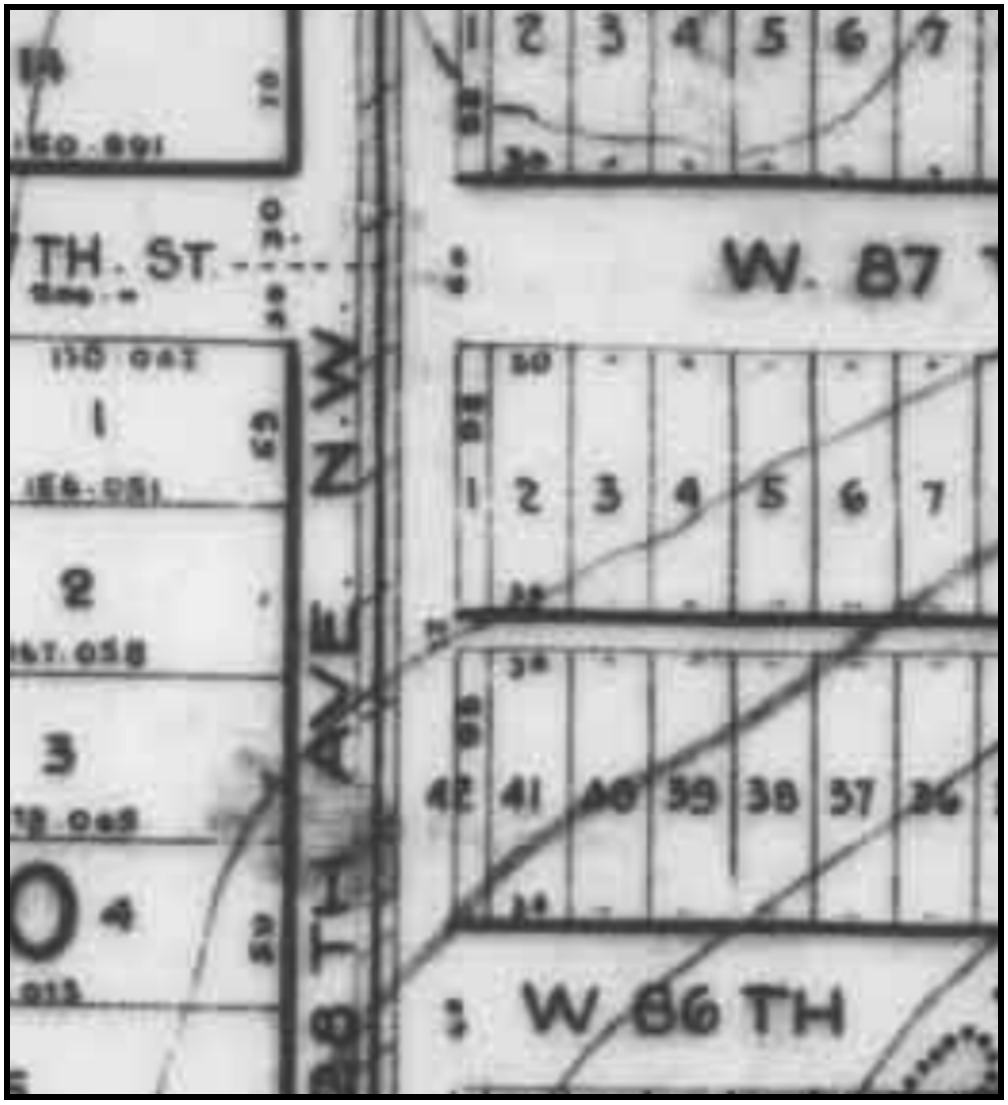
Mr. Graves also mentions the following in the above mentioned interpretation:

> In 1930, there was no formal process for short subdivision of land. The Coulthard property was split into three equal pieces, as a matter of public record, using the processes available at that time, which included describing portions of the original property in building permits. While not a record used for determining legal building sites, the sewer card (started in 1928) and sewer plat (entered in 1931) of this street also reflect that Parcel B was contemplated as a separate site, consistent with the Department's conclusion under the Historic Lot Exception.

Following this same logic we obtained the sewer card and sewer plat that clearly shows lot1 being reduced as a result of the Road Establishment.
Full image can be downloaded at the official Seattle government page by following this link:
https://dpddata1.seattle.gov/dpd/Apps/SSC2001/FRONT/TN26/SOUTH/MAP230/2438-3L.JPG
For the purposes of this response and to emphasize this point I am providing the screenshot of the sewage card here zooming in on the subject lot.



Also this lot size is reflected in the official engineering map from 1938 that also shows clearly that the lot 1 is only 10 feet wide and therefore is disqualified from being considered as a separate building site. Map can be downloaded from the Road Services Map Vault by searching for "ENGINEER MAP 35-26-3" under the project name and entering the year 1938 under the Map Year. Also for the sake of this response I will paste the cropped view here. Appeal document contains a lot more evidence that proves lot 1 could have never been considered a separate building site prior to 1957.



SDCI states in their motion to dismiss this appeal:

> ...application of the code to determine historic lot status or dedication requirements, if any, would only be subject to challenge through a Code Interpretation Request pursuant to Section 23.88.020.C.3.c. filed at the time of the appeal of the underlying Type II land use decision. No such interpretation challenge was timely filed and that issue is now outside the scope of this appeal.

Under the section 23.88.020 - Land use interpretations, under C.3.a it states:

> If an interpretation relates to a project application requiring public notice pursuant to the provisions of Chapter 23.76, the following rules govern the deadline by which the request for interpretation shall be received by the Department in order for the interpretation to be applied to the pending permit application:
>
> a. Any person may request an interpretation prior to the end of the public comment period, including any extension, for the project application.

Appellant has left the following public comment:

> Municipal Code - 23.44.010 - Lot requirements
>
> "The Historic Lot Exception." The historic lot exception may be applied to allow separate development of lots already in existence if the lot has an area of at least 2,500 square feet, and was established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, platting, or building permit.
>
> Applicant and financially responsible party for this project MUST prove that this lot "was established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, platting, or building permit". This was also overlooked when they were given the parcel number in 2017. This is a clear violation of the code and MUST be fixed, unless the parties involved can prove as stated above that this lot was established as a separate building site prior to the date stated.
>
> *Comment submitted on: Tue Mar 08 2022 09:37:52 GMT-0800 (PST)*

Appellant has also sent an email to SDCI Director asking the following:

> Also historic lot exception has never been verified. It's clearly stated there that the lot had to be "established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, platting, or building permit". It seems like you only took their word for it but there is no proof this was ever the case. Please ask them to provide proof of this. Don't just take their word for it.
>
> d. The historic lot exception. The historic lot exception may be applied to allow separate development of lots already in existence if the lot has an area of at least 2,500 square feet, and was established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, platting, or building permit. The qualifying lot shall be subject to the following provisions:
>
> 1) A lot is considered to have been established as a separate building site by deed if the lot was held under separate ownership from all abutting lots for at least one year after the date the recorded deed transferred ownership. A lot is considered to have been established as a separate building site by contract of sale only if that sale would have caused the property to be under separate ownership from all abutting lots.

SDCI responded with the following:

> For purposes of this section, there is not a question that Lot 1 was a separate building site in the public records of the county or City prior to July 24, 1957. The Imperial Heights Addition to the City of Ballard dates from the early part of the last century including a 1906 plat document you've included in the google drive documents you researched. This addition created hundreds of individual lots, 30 by 98 feet, all eligible under the code at that time for separate development.

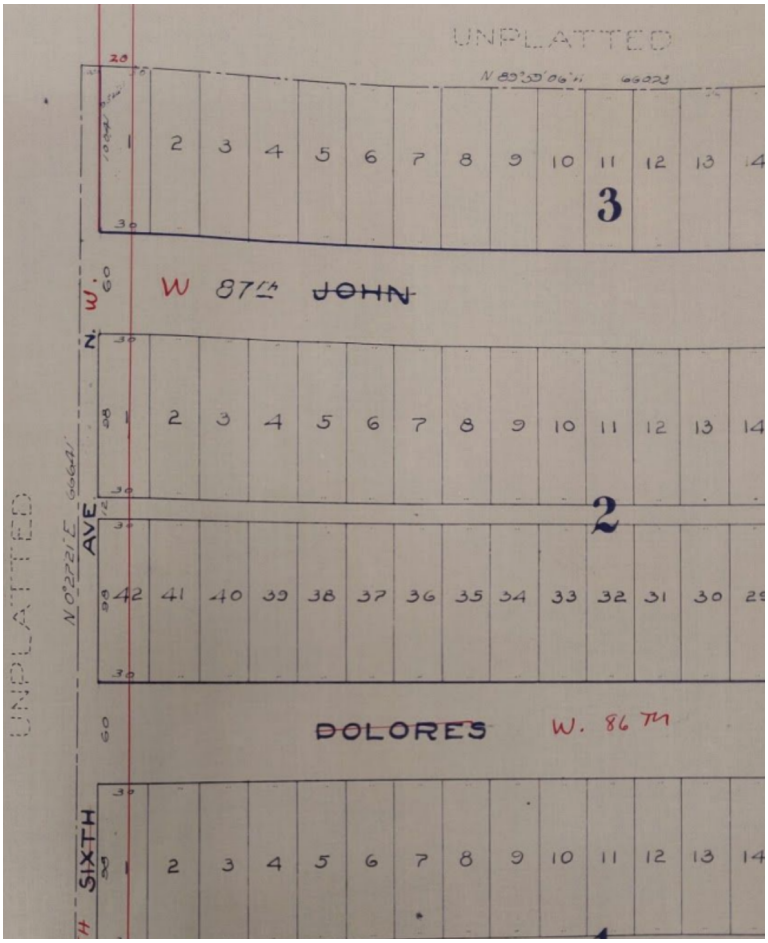
Appellant responded with the following:

> Please look over #1 there explaining what it means for the lot to be "considered to have been established as a separate building site". It clearly states there that the lot had to be "held under separate ownership from all abutting lots for at least one year after the date the recorded deed transferred ownership". We looked over all the deeds and this lot has never been under separate

ownership to qualify for the "historical lot exception". These folks never provided any proof of this and you never asked for it. You folks just took their word for it and you're continuing to violate your own code. Please look this over carefully and request they prove this to you.

Document I researched shows the plat book in archives as it currently looks, with the red line indicating the right of way. Another proof that this lot should have never been parceled.

Again adding the image here so it's clear what is being discussed.



SDCI has not responded to the last message. Including those Emails as attachment to this document.

In the document titled "Order Determining Land Use Decision Type Being Appealed, and Order of Dismissal" for the MUP-16-019(SE) and MUP-16-020(SE), Hearing Examiner, Sue A. Tanner stated the following:

> SGSC relies on *Kate v. Seattle*[2] to argue that a code interpretation is not required to exhaust administrative remedies. SGSC acknowledges that the portion of the court's opinion it references is dicta and, in any event, the facts of the case are distinguishable from those in this case. The

[2] 44 Wn. App. 754, 723 P.2d 493 (1986)

court determined that the neighbors in *Kate* did not have notice of their right to seek a code interpretation, whereas in this case, SGSC did have such notice.

Appellant in this case never received any "notice to seek a code interpretation" even after communicating with the SDCI on multiple occasions raising the code questions and receiving "interpretations" via email communications.

Conclusion

The appeal of Project No. 3038863-LU should NOT be dismissed. The evidence outlined in this appeal and this response regarding historic lot standards, dedication requirements and/or title claims were raised via email to SDCI's director and Mr. Houston was copied on those as well. Never did they mention that any formal request was necessary. It is obvious that SDCI uses this method to prevent the public from being heard claiming that somehow in order to be heard the public must follow rules that are not clearly communicated. To claim the issue was not raised with SDCI is false.

Entered this 23rd day of November 2022.

Haris Hodzic

_____

Haris Hodzic, Appellant

cc. Michael Houston, SDCI
Mike Rayburn and Jim Rockwell, applicant

Appendix A: Emails/Code Interpretation

3038863-LU - Zoning Summary and code violation for this project

Haris Hodzic <haris.hodzic@gmail.com> Wed, Jun 29, 2022 at 9:52 AM
To: "Brown, Sonja" <Sonja.Brown@seattle.gov>
Cc: "Torgelson, Nathan" <Nathan.Torgelson@seattle.gov>

Hi Sonja/Nathan,
I was hoping you would address the last email I sent over. Is there any chance you could take a look and tell me what you think?
What is considered "existing pedestrian access and circulation improvement"? Is that defined in some document or is that open to interpretation? Reason I ask is because clearly there is adequate gravel improvement pedestrians use to walk up and down 28th ave. This is north/south/west of the lot and definitely less than 100 feet. Also there is a bus stop just about 60 feet northwest direction from the lot.

Also historic lot exception has never been verified. It's clearly stated there that the lot had to be "established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, platting, or building permit". It seems like you only took their word for it but there is no proof this was ever the case. Please ask them to provide proof of this. Don't just take their word for it.

d. The historic lot exception. The historic lot exception may be applied to allow separate development of lots already in existence if the lot has an area of at least 2,500 square feet, and was established as a separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, platting, or building permit. The qualifying lot shall be subject to the following provisions:
    1) A lot is considered to have been established as a separate building site by deed if the lot was held under separate ownership from all abutting lots for at least one year after the date the recorded deed transferred ownership. A lot is considered to have been established as a separate building site by contract of sale only if that sale would have caused the property to be under separate ownership from all abutting lots.

Thank you.

Haris

Issues with 3038863-LU

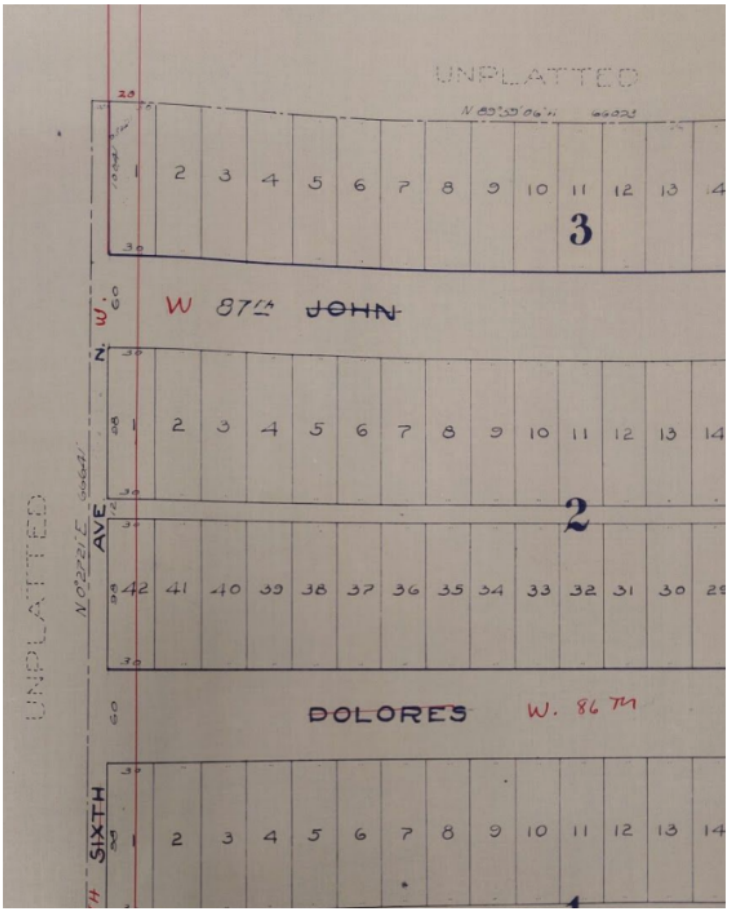
Haris Hodzic <haris.hodzic@gmail.com> Sun, Jul 17, 2022 at 11:40 PM
To: "Brown, Sonja" <Sonja.Brown@seattle.gov>, "Torgelson, Nathan" <Nathan.Torgelson@seattle.gov>, Maria.Cruz@seattle.gov, "Houston, MichaelT" <MichaelT.Houston@seattle.gov>

Hi Sonja and Nathan,
Sorry I forgot to mention your response to a "historical lot exception". You stated "For purposes of this section, there is not a question that Lot 1 was a separate building site in the public records of the county or City prior to July 24, 1957. The Imperial Heights Addition to the City of Ballard dates from the early part of the last century including a 1906 plat document you've included in the google drive documents you researched. This addition created hundreds of individual lots, 30 by 98 feet, all eligible under the code at that time for separate development."
From the code section: **23.44.010 - Minimum lot area and lot coverage**

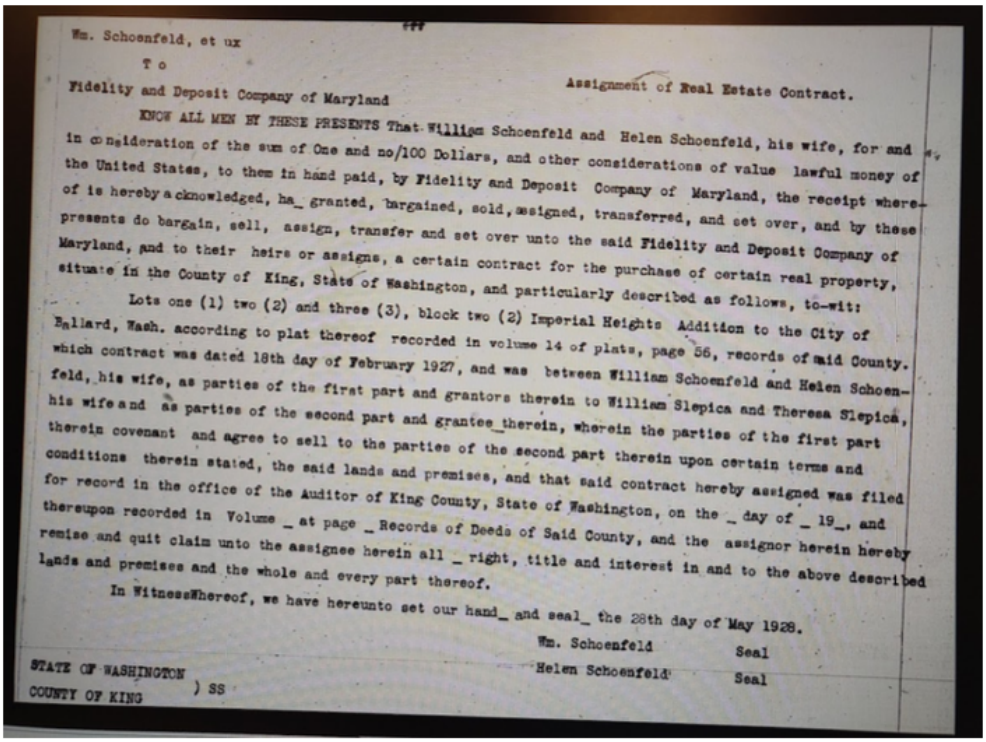
> d. The historic lot exception. The historic lot exception may be applied to allow separate development of lots already in existence if the lot has an area of at least 2,500 square feet, and was established as a **separate building site in the public records of the county or City prior to July 24, 1957, by deed, contract of sale, platting, or building permit**. The qualifying lot shall be subject to the following provisions:
>
> 1) **A lot is considered to have been established as a separate building site by deed if the lot was held under separate ownership from all abutting lots for at least one year after the date the recorded deed transferred ownership.** A lot is considered to have been established as a separate building site by contract of sale only if that sale would have caused the property to be under separate ownership from all abutting lots.

Please look over #1 there explaining what it means for the lot to be "considered to have been established as a separate building site". It clearly states there that the lot had to be "held under separate ownership from all abutting lots for at least one year after the date the recorded deed transferred ownership". We looked over all the deeds and this lot has never been under separate ownership to qualify for the "historical lot exception". These folks never provided any proof of this and you never asked for it. You folks just took their word for it and you're continuing to violate your own code. Please look this over carefully and request they prove this to you.

Document I researched shows the plat book in archives as it currently looks, with the red line indicating the right of way. Another proof that this lot should have never been parceled.



Here is the deed of sale dating back to 5/28/1928 showing Lots 1,2,3, under same ownership and NOT under separate ownership for lot 1 as required by the municipal code.



Wm. Schoenfeld, et ux

T o

Fidelity and Deposit Company of Maryland

Assignment of Real Estate Contract.

KNOW ALL MEN BY THESE PRESENTS That William Schoenfeld and Helen Schoenfeld, his wife, for and in consideration of the sum of One and no/100 Dollars, and other considerations of value lawful money of the United States, to them in hand paid, by Fidelity and Deposit Company of Maryland, the receipt whereof is hereby acknowledged, ha_ granted, bargained, sold, assigned, transferred, and set over, and by these presents do bargain, sell, assign, transfer and set over unto the said Fidelity and Deposit Company of Maryland, and to their heirs or assigns, a certain contract for the purchase of certain real property, situate in the County of King, State of Washington, and particularly described as follows, to-wit:

Lots one (1) two (2) and three (3), block two (2) Imperial Heights Addition to the City of Ballard, Wash. according to plat thereof recorded in volume 14 of plats, page 56, records of said County. which contract was dated 18th day of February 1927, and was between William Schoenfeld and Helen Schoenfeld, his wife, as parties of the first part and grantors therein to William Slepica and Theresa Slepica, his wife and as parties of the second part and grantee therein, wherein the parties of the first part therein covenant and agree to sell to the parties of the second part therein upon certain terms and conditions therein stated, the said lands and premises, and that said contract hereby assigned was filed for record in the office of the Auditor of King County, State of Washington, on the _ day of _ 19_, and thereupon recorded in Volume _ at page _ Records of Deeds of Said County, and the assignor herein hereby remise and quit claim unto the assignee herein all _ right, title and interest in and to the above described lands and premises and the whole and every part thereof.

In Witness Whereof, we have hereunto set our hand_ and seal_ the 28th day of May 1928.

Wm. Schoenfeld Seal

Helen Schoenfeld Seal

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

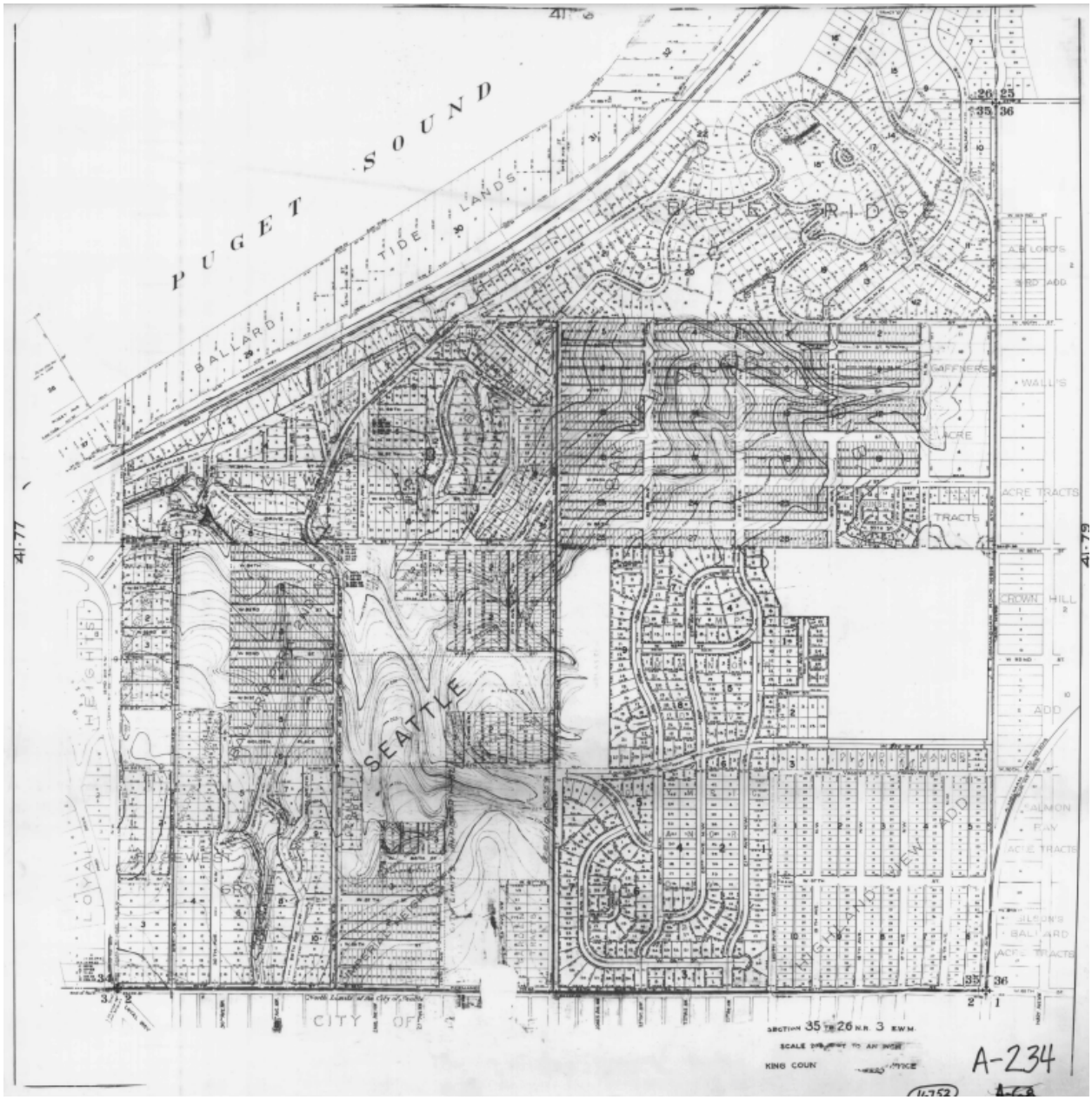
and then 11/4/1957 deed of sale shows again lots 1,2,3 under the same ownership, again lot 1 has not been under separate ownership.

I might be missing something under this provision, and it's possible these folks have something that proves separate ownership as required by the code.

Hope this helps in making sure the city is not cheated and that all the bases are covered.

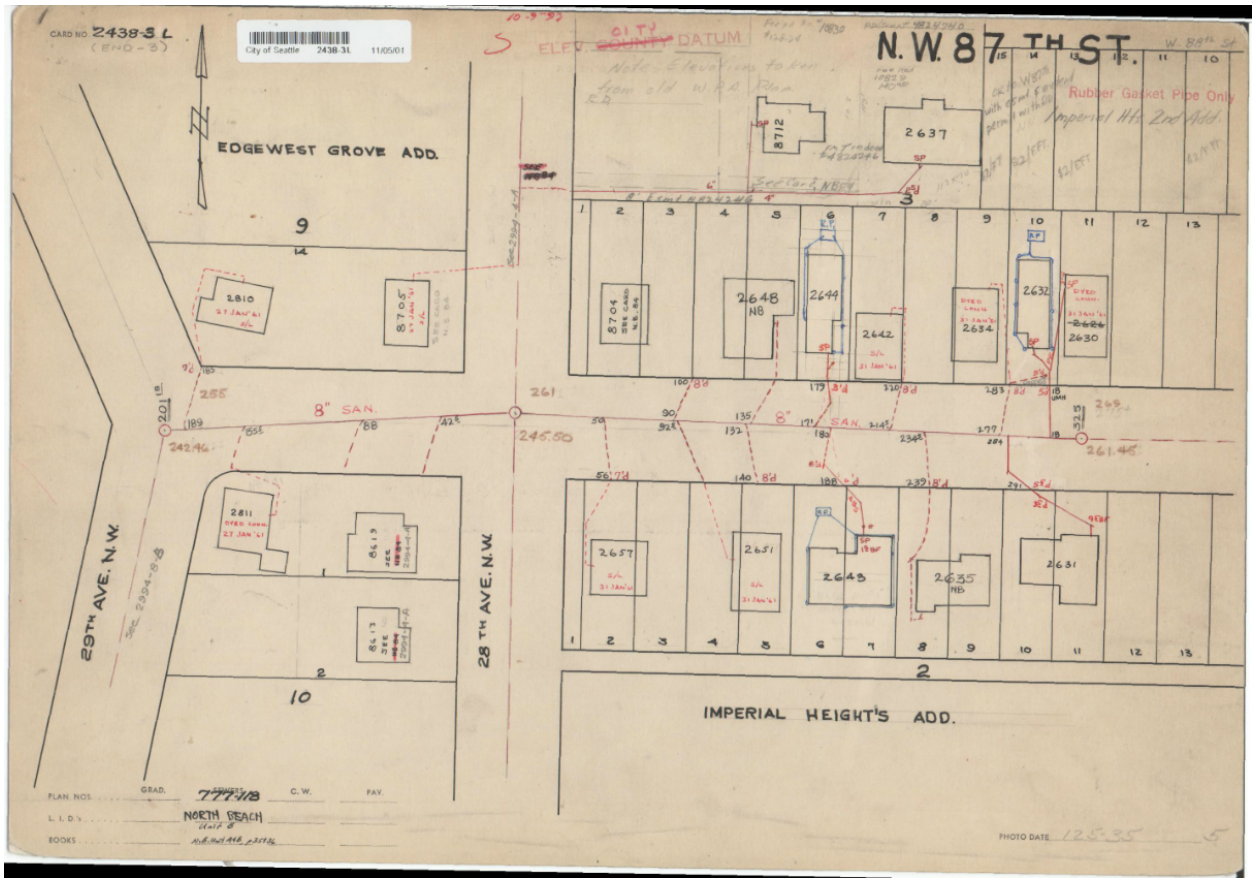
Thank you folks and I truly hope I was being helpful here.

Appendix B: Engineering Map from 1938



Full resolution map can be downloaded from the Road Services Map Vault by searching for "ENGINEER MAP 35-26-3" under the project name and entering the year 1938 under the Map Year.

Appendix C: Sewer Card



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