BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

HARIS HODZIC

from a decision issued by the Director, Department of SDCI

Hearing Examiner File:
MUP-22-010 (SE, SU)

APPELLANT'S
MOTION TO RECONSIDER UPDATE

The Appellant, Haris Hodzic, respectfully moves for the Hearing Examiner's reconsideration of the decision on the MUP-22-010 issued on 8th of December, 2022. This request is timely per Hearing Examiner Rules of Practice and Procedure (HER) 3.20 (b) and qualifies the filing within 10 days after the date of the Hearing Examiner's decision.

Per HER 3.20 (a), this motion for reconsideration is made for two reasons:

(1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing; and
(2) A clear mistake was made as to material fact.

1. Reconsideration due to Irregularity in the Proceedings

The Hearing Examiner determined that "This issue is outside the scope of a Type II Special Exception, and is therefore not within the jurisdiction of the Hearing Examiner to hear". SMC 23.44.010.B.3 is a Type II review and is under jurisdiction of the Hearing Examiner

Special exception review for lots less than 3,200 square feet in area. A special exception Type II review as provided for in Section 23.76.006 is required for separate development of any lot that has not been previously **developed as a separate lot** and has an area less than 3,200 square feet that **qualifies for any lot area exception in subsection 23.44.010.B.1**.

As a fundamental component of this provision the lot must qualify for any lot area exception in subsection 23.44.010.B.1. Since this is a fundamental component of the Special Exception Type II review that is appealable to the Hearing Examing it means that the Hearing Examiner has jurisdiction and should hear and consider this appeal.

Another clear irregularity that was either overlooked or ignored by the Hearing Examiner was the fact that the SDCI never properly alerted the public on the project. Two signs that were posted in the neighborhood (see submitted Exhibit 9-Incorrect notice) had an expired (year old) date for the commenting period which could have caused the public to move away from the project and not comment which they otherwise would have.

Hearing examiner also did not provide postscript with his "Order on Motion To Dismiss". It is unclear if this is a violation of the HER 3.21. Under this rule it is stated "Information regarding subsequent appeal opportunities is provided as a postscript to the Hearing Examiner decision". This was not provided, but Appellant had reached out to Hearing Examiner's office and got a reply that stated the following:

> Hi Mr. Hodzic,
>
> It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.
>
> The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.
>
> The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521
>
> Kind regards,
>
> Angela Oberhansly
>
> Legal Assistant

Had Appellant not reached out to the Hearing Examiner he could have potentially missed out drafting this motion in a timely manner. Based on this response it is our belief that "judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued" (emphasis added). We hope that the Hearing Examiner will at least honor the instructions received by their office and allow the Appellant proper time to prepare and file the request for the judicial review. Also it is unclear how holidays fit into the picture so it would be appreciated if in the reply to this motion we could get an exact deadline as to when we can file the petition to the Superior Court of King County.

Another irregularity in the proceeding is that the SDCI department created unfair advantage for the department and the Applicant by not, in good faith, providing instructions to the Appellant and leading the Appellant to believe that response to the historical lot exception question via email communication did not constitute, what was not known to Appellant, the Interpretation request. At the time of this communication Appellant believed that he did everything that was expected of him and that issue was properly raised with the department, and the answer was received. Answer they provided can be disputed and deliberated on and therefore should have been considered. There is no proof that the interpretation would have led to any different response and therefore does not warrant spending unnecessary funds. Also considering how fast SDCI responded, paying 10 hours for them to just state the same thing could be interpreted as embezzlement or downright tactic to dissuade the public from ever even considering challenging any of the City's decisions. I must say, this tactic is brilliant and it obviously works considering that the Hearing Examiner dismisses more appeals than it considers. From that standpoint it makes you wonder who the Hearing Examiner is there for. As a member of the public I certainly do not find this position to be in the interest of the public as it seems that the Hearing Examiner is not really there to hear but to silence the public and basically signal that the City can never make any mistakes. Makes you wonder why are tax-payers even allowing this position. Abolishing the Hearing Examiner position sounds like a good idea as it is clear it is just there to present the illusion of accountability but in the light of never allowing the public to speak, why have the position in the first place?

Appellant was unaware that paying multiple thousands of dollars just to get the same question answered via what is known as code interpretation request would somehow be necessary to get the fair hearing. This was explained in the reply to the SDCI/Applicant motions to dismiss. Hope is that the Hearing Examiner will recognize the absurdity of this rule and either give us an opportunity to request this so-called "code interpretation" so that we could satisfy exhausting all of our administrative remedies and to get a fair hearing, prior to requesting judicial review.

Also it is unfair to expect Appellant to seek the code interpretation while Applicants never obtained "Legal Building Site opinion letter". By not having the legal site letter done it is unclear how the determination was made that the lot qualifies. There is no official communication on this, only emails from the SDCI and Applicant discussing ways to get a parcel number for the lot and have it segregated. This discussion does not constitute "Legal Building Site Opinion Letter" and should be recognized as irrelevant. Especially in the light of SDCI asking multiple times to have a legal letter obtained to which Applicant said they were 90% ready to request it but never did. There is no legal proof or otherwise that indicates a lot qualifies.

Considering that the public commenting was not properly conducted we should still be in the commenting period as the issue was never addressed even after multiple requests to the SDCI to have it fixed. Based on the section 23.88.020 - Land use interpretations, under C.3.a:

> a. Any person may request an interpretation prior to the end of the public comment period, including any extension, for the project application.

Based on the erroneous notice, the commenting period ended a year before application was even started. From that standpoint no individual could have ever requested the interpretation since the public commenting period ended before it even began. This created clear “irregularity in the proceedings” and created unfair advantage for the SDCI and Applicant; therefore this motion to reconsider should be granted.

2. Reconsideration due to Clear Mistake to the Material Fact

In the “Order on motion to dismiss” Hearing Examiner made a mistake as to a material fact when he stated the following:

> The appeal requests review of the subject property’s legal description based on the contention that a portion of the lot should have been previously dedicated to the City for right of way purposes. This issue is outside the scope of a Type II Special Exception, and is therefore not within the jurisdiction of the Hearing Examiner to hear. The Appellant does not address this issue in his response to the motion, and the appeal should be dismissed on this basis.

The appeal does not request the review of the subject property’s legal description alone but it does request the review of the basis as to which the “Historical Lot Exception” was granted for the lot in question. All the evidence mentioned is to support the fact that the SDCI director made a clear mistake when considering the lot in question as a “legal building site prior to 1957”. Reviewing subject property’s legal description is in support of proving that SDCI Director's decision was in error based on long standing departments policies and rulings on “historical lot exception” matters.
This was explained in the Appellant's response to the motion, and is unfortunate that the Hearing Examiner did not take it into consideration.

Dear Hearing Examiner, please reconsider and give us an opportunity to be heard.

Dated this 16th day of December 2022

Haris Hodzic

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Haris Hodzic, Appellant

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