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10 BEFORE THE HEARING EXAMINER
11 FOR THE CITY OF SEATTLE

12 In RE: Appeal by

13
14 AQUARIAN FOUNDATION, INC

Hearing Examiner File:

MUP-23-011

Department Reference:

3038146-LU

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16
17 from the September 18, 2023 City of Seattle

18 Analysis and Decision of the Director of the Seattle
19 Department of Construction and Inspections.

APPELLANT'S OBJECTION AND
ANSWER TO MOTION FOR
PARTIAL DISMISSAL

20
21
22 **1. INTRODUCTION**
23

24 Aquarian Foundation, Inc., (Appellant) is a registered 501(c) 3 religious organization. Appellant
25 is the fee owner of 315 15th Avenue East, Seattle, WA 98112. The site for the proposed project
26 is 1410 E. John St. (Project's site) Appellant is the Adjoining Property owner to the Project site.
27 The Project's Applicant is Jodi Patterson O' Hare's (Applicant.) The Project will adversely affect
28 Appellant.

29
30 Appellant objects to and answers Applicant's Motion for Partial Dismissal. The Hearing Examiner
31 has Jurisdiction over the subject matter enumerated in the Appeal. Appellant's claims have merit
32 under the Code. Appellant has standing.
33

APPELLANT'S OBJECTION AND ANSWER TO MOTION FOR PARTIAL DISMISSAL

AQUARIAN FOUNDATION, INC
315 15TH AVE EAST
SEATTLE, WA 98112

2. HEARING EXAMINER'S JURISDICTION

A. Hearing Examiner's Scope of Review.

The Seattle Municipal Code (SMC) governs the Examiner's scope of review. The Hearing Examiner shall entertain issues cited in the appeal that relate to compliance with the procedures for Type II decisions as required in SMC Chapter 23.76.

B. 23.76.006 - Master Use Permits required.

Type II, decisions are components of Master Use Permits. Master Use Permits are required for all projects requiring one or more of these decisions. The following are types of Type II decisions:

C 1. The following procedural environmental decisions for Master Use Permits and for building, demolition, grading, and other construction permits are subject to appeal to the Hearing Examiner.

C2 The following decisions are subject to appeal to the Hearing Examiner a. Establishment or change of use for temporary uses more than four weeks not otherwise permitted in the zone or not meeting development c.) Variances; d.) Special exceptions; e.) Design review decisions; f.) Administrative conditional uses h.) Major Phased Developments; i) Determination of project consistency n.) Determination of requirements according to subsections 23.58B.025.A.4 and 23.58C.030.A.3; and q) Major revisions to an issued and unexpired MUP subject to design review under subsection SMC 23.41.008.

C. Applicant's Motion for Partial Dismissal is factually wrong

Applicant's Motion for Partial Dismissal is factually wrong. Appellant objects to Applicant's Motion for Partial Dismissal. The appeal process is so designed that appeals may be started by any person significantly affected by or interested in the permit. Appellant is significantly affected by and interested in the permit. The Hearing Examiner is responsible for the impartial facilitation of administrative hearings.

Applicant incorrectly asserts that all or some of Appellant's claims and assertions must be dismissed because allegedly "the Examiner lacks jurisdiction" or allegedly Appellant's claims and assertions are "frivolous or without merit on its face." Applicant is wrong. The Hearing Examiner does have jurisdiction over Appellant's claims and assertions. Applicant is not the trier of fact.

1 **D. Appeal Filed in Good Faith**

2 Appellant filed its appeal in good faith. Appellant formed its assertions and claims in fact and law
3 after Appellant's reasonable inquiry warranted by existing law. See SMC 23.76.022; SMC
4 22.170.200 C.; SMC 21A 16.010; SMC 21A 16.040; and SMC 23.86.012. Appellant did not file
5 the appeal for any improper purpose such as to harass or cause frivolous litigation. Appellant's
6 appeal is not frivolous or without merit. The Hearing Examiner has jurisdiction over the topics in
7 the appeal. SMC 23.76.022. Appellant is not prevented from challenging the Director's decisions
8 under a MUP especially when the Director is not enforcing the Code. The Hearing Examiner has
9 Jurisdiction over a Major Phased Development. Major Phased development means a
10 nonresidential, multiple building project that, by its size or function, is complex enough to require
11 construction phasing over an extended period. The Project is identified as a Major Phased
12 Development.

13 **3. MERIT**

14 The question involving the merits of Appellant's claims are to determined by:

- 15 1. Does the Hearing Examiner has jurisdiction of the determination under review. Yes .
16 2. Has the authority, conferred upon the Hearing Officer, in relation to the topics been pursued
17 in the mode required by law to let the Hearing Examiner make a determination. Yes.
18 *Wash. Rev. Code 7.16.120.* The Hearing Examiner has jurisdiction of the determination under
19 review. The authority conferred upon the Hearting office in relation to the topics have been
20 pursued by law to let the Hearing Examiner make a determination.

21
22 All elements of Appellant's appeal have merit and standing. Each element falls under the
23 Jurisdiction of the Hearing Examiner's authority to make a determination. The Hearing Examiner
24 shall entertain issues cited in the appeal that relate to compliance with the procedures for Type II
25 decisions as required in Chapter 23.76. Under **SMC 23.76.022** Appellant is not prevented from
26 challenging the Directors decision on a MUP.

27
28 Appellant asserts that each of Appellant's ten-numbered objections have merit and standing. (In
29 response to Question 2. What are your objections to the issue being appealed?) See Notice of
30 Appeal at 4. **SMC 23.76.022. SMC 22.170.200.**

31
32 Appellant asserts that each of the thirteen-numbered Errors and Omissions have merit and
33 standing. (In Question 2 See Notice of Appeal at 4 -7. **SMC 23.76.022. SMC 22.170.200**

1 Appellant's statements requesting relief have merit and standing. (In Question 3 See Notice of
2 Appeal at 8.) SMC 23.76.022. SMC 22.170.200. The Hearing Examiner shall entertain issues
3 cited in the appeal that relate to compliance with the procedures for Type II decisions as required
4 in Chapter 23.76. Appellant is not prevented from challenging the Directors decision on a Master
5 Use Permit (MUP). Appeals may be started by any person significantly affected by or interested
6 in the permit. Appellant is significantly affected by the permit. Appellant is interested in the permit.
7 .

8 4. STANDING

9 Appellant has standing. Appeals may be started by any person significantly affected by or
10 interested in the permit. Appellant is significantly affected by the permit.

11 SMC 23.76.022, C. Standing. Appeals may be started by any person significantly affected by or
12 interested in the permit. All Type II decisions in subsection 23.76.006.C are subject to an
13 administrative open record appeal as described as: C. The following is a Type II decision:1. The
14 following procedural environmental decisions for Master Use Permits and for building, demolition,
15 grading, and other construction permits are subject to appeal to the Hearing Examiner. pursuant
16 to Section 23.76.036.

18 5. ARGUMENT

20 A. Appellant's claims and assertions of property rights cannot be dismissed

21
22 Applicant cites many cases to support a Motion for Partial dismissal. Applicant has not cited a
23 case that argues that a fee property owner does not have vested property rights in the fee owner's
24 property. Applicant does not cite a case that argues that adjoining property owners are required
25 to accommodate unlawful encroachments and willful trespass on their property. Applicant does
26 not cite a case that asserts or argues that the protections afforded the Adjacent Property Owner
27 under the Code are "redundant" or invalid. Applicant does not cite a case that argues that
28 unwanted and unlawful encroachments and willful trespass by other property owners or a
29 developer is lawful under the Code. Applicant does not cite a case that argues under the Code
30 there are no requirements for an Applicant under MUP to secure written easement agreements
31 from adjoining property owners in fee for demolition, excavation, grading and soil and nail permits.
32 Applicant does not cite a case or Code where the SDCI Director (Director) is exempt from
33 enforcing stipulated Code requirements for grading permits, demolition permits, excavation

1 permits and soil and nail permits in a Major Phased Development or any development. Applicant's
2 Motion should be Denied.

3
4 Applicant does not cite a case that argues that property boundaries lines, lot lines and property
5 lines are irrelevant under MUP or any other Land Use. Applicant does not argue that SDCI Rules,
6 Codified Design Review Guidelines, the standing Code and RCW are irrelevant to the Project.

7 Appellant has in good faith correctly raised issues and claims about its property rights. Appellant's
8 property rights cannot be dismissed or ignored because Appellant's property rights are
9 inconvenient for Applicant or for the City. Applicant has deliberately mis-construed Appellant's
10 claims and assertions when Applicant falsely states that "*Appellant asserts the Decisions by the*
11 *Board and Director are in error because Appellant 'has not and will not grant easements or*
12 *agreements.'*" at page 5: 11-12 Applicant's Motion for Partial Dismissal. controverted.

13
14 Appellant asserts that the Board and the Director's decisions are in error when the Guidelines
15 and the standing Code are not enforced. Appellant correctly argues why the Director is in error
16 and why the Director has not enforced compliancy with the code requirement. The Director did
17 not enforce the requirements stipulated by the standing Code to secure demolition, grading, soil
18 and nail and excavation permits. SMC 22.170.200 C. Adjoining Property Protection. Appellant
19 correctly filed its appeal by asserting that Appellant "*Aquarian Foundation, Inc., is the owner of*
20 *the adjoining property to the Project and Appellant's property rights will be negatively affected by*
21 *the Project.*" Appellant qualified its appeal under Objections 1-10 at Question 2 and Errors and
22 Omissions 1-13 and 1-5 at Question Number 3 at What can the Hearing Examiner do?

23 Appellant has stated for the record that Applicant has not secured easement agreements for
24 encroachments onto Appellant's property to eliminate any present or future alleged
25 misunderstandings.

26 27 **B. Appellant has not granted an Easement to Applicant**

28 The Code prohibits the Director or SDCI from issuing permits for demolition, shoring and nailing,
29 grading and excavation if the Applicant has not secured a written easement agreement from
30 Adjoining Property owner and provided proof of the agreement to Director. SMC 22.170.200
31 Appellant has not granted any Easement Agreement to Applicant. The Director has not enforced
32 the requirement under the Code.

1 The Applicant and Director have indisputable knowledge that MUP3038146-LU will require
2 demolition, shore and nail, grading and excavation permits. Under Code these types of permits
3 require written easement agreements for encroachment on Appellant's property. **See EXHIBIT 1.**
4

5 Appellant raises issues directly addressed by the Code and which are under the Hearing
6 Examiner's Jurisdiction. SMC 22.170.200 and SMC 22. 170.060 See Objections 1, 2, 3, 4 and
7 9; Errors 2, 3, and 4 a, b and c, and 6; and request for Relief 5 are valid claims. Appellant's claims
8 are not outside of Code criteria. These claims cannot be dismissed. Appellant has vested property
9 rights by law as a property owner and as an adjoining property owner to Project.
10

11 **C. Applicant does not dispute Appellant's vested property rights**

12
13 Applicant does not dispute that Appellant has vested property rights in the walls, and fence and
14 cement retainer walls on shared boundary lines and lot lines of Project site. Applicant does not
15 deny that Appellant's property is encroached by the Project. Applicant makes false assertions
16 when stating that Appellant's claims are simply an "encroachment on Church air space."
17 Appellant's claims and assertions of property rights' raise issues inside Code criteria. Shared
18 boundaries walls, fences and cement retaining walls and trees are relevant to the adjoining
19 property owner. SMC 22.170.200. The tree canopy abutting Appellant's property line is a relevant
20 claim under the standing Code. The right to Protection of the Appellant's adjoining property fall
21 under the Code governing MUP and Type II Decisions. SMC Chapter 23.42.040 A-F. The Hearing
22 Examiner has Jurisdiction to make a determination. The Project calls for demolition of the existing
23 building at the Project site. A lawful permit under MUP is required.
24

25 **D. The Director must enforce the Code, Rules and Guidelines.**

26 The Director's review of Applicant's updated plans could not have found that the plans satisfied
27 the conditions stipulated for a MUP. SDCI gave Applicant notice in January of 2023 that a written
28 easement agreement from Appellant was required under the Code. Applicant has not secured an
29 agreement to encroach on Appellant's property. The Director has approved the plans for the
30 Project in violation of the Code. Type II Decisions: Master Use Permits come under the Hearing
31 Examiners Jurisdiction.
32

33 Appellant is not trying to change the Code. Appellant is requesting relief under the Code. The
34 Director must enforce the Seattle Municipal Codes and Rules and Guidelines. The Code

specifically preserves the Appellant's property rights as an adjoining property owner to the Project. SMC 22.170.200: *Protection of Adjoining Property*. The Code protects property owners for unwanted and unlawful encroachment.

The director is required to enforce the Code, the Rules and the Design Review Guidelines. The Applicant under MUP 3038146-LU is required to provide the Director with a written easement agreement before permits of demolition, soil and nail, excavation and grading can be approved.

E. Defies Logic that Applicant is unaware

Applicant lacks credibility when Applicant assert in Applicant's argument that the Project "may require future approvals such as shoring, excavation, and demolition permit " *Emphasis added* Appellants. It defies logic that Applicant asserts that Applicant is unaware that MUP 3038146-LU is for a land use application to allow 2, 5 story apartment buildings (336 units total) with retail, parking for 373 vehicles and that the existing building will be demolished.

Applicant has applied for these permits under MUP 3038146-LU and is aware under SMC 22.170.060 that a grading permit is required for the Project and to get the grading permit approved the rules stipulated for the Director under the Code is that the Director require the Applicant to a written easement agreement from the adjoining property owner. The very size of the Project will require demolition permits, grading permits, soil and nail permits and excavation permits. All these permits directly affect and will encroach on Appellant's adjoining property. The Director requires an easement agreement for these permits to be approved.

Demolition, excavation, grading and shore and nail permits cannot be lawfully approved if the Applicant does not fulfill the stipulated requirements under the standing Code. 22.170.200, even if the Board and the Director approves the Design of the Project. Appellant reiterates that the Board and the Director's decisions are in error. The Director has not enforced the Code or the Design Process Guidelines. *Wash. State Dept of Transp. v. City of Seattle, 192 Wash. App. 824 (Wash. Ct. App. 2016)* ... SMC 22.170.060 sets out the requirements for grading permits. C.

c)Where any portion of the grading will encroach on an adjacent property, proof of ownership of the adjacent property or an easement or authorization in accordance with [Section 22.170.200](#).

1 **F. The Code is specific about Protection of Adjoining Property for MUP**

2
3 Appellant has standing to challenge the (MUP) to develop two multifamily residential buildings
4 with retail and parking with demolition of the existing building on the site (Project)
5 Applicant's Project encroaches on Appellant's Adjoining property. It is ludicrous to infer or argue
6 that the Adjoining Property rights are "redundant" for a Motion for Partial Dismissal.. Applicant's
7 motion must be denied. Appellant asserts that the Rules issued by the Director are not being
8 followed. 22.170.070 C 2 d. *Site Analysis. The effect of grading upon surrounding properties.* The
9 Director is in receipt of a 75 - page site analysis for the Project. *Geotechnical Engineering Services*
10 *Final Report dated September 23, 2022* at 6.

11 *Excavation and Demolition Permit " North Wall. We recommend that the north shoring wall be*
12 *completed using soil and nail shoring with full depth vertical elements. " An easement agreement*
13 *from the adjacent property owner will be required for ground anchors that will extend below the*
14 *adjacent property to the northeast (224 14th Avenue East)and north west (315 15th Avenue East)*

15 **See EXHIBIT 2**

16
17 **G. Applicant does not deny setbacks are required under the Code**

18
19 Applicant does not deny that setbacks are required under the Code. SMC 23.47a.02. Applicant
20 incorrectly asserts the setback provision cannot support a claim under a Type II MUP appeal.
21 Applicant again mis-construes Appellant's claims and assertions. Appellant is not challenging the
22 Code. Appellant requests that provisions in the Code be enforced. Code SMC 22.170.200 and
23 SMC 23.86.012 Required setbacks, provisions governing maximum grading slope, prohibiting
24 encroachment are part of the MUP in the Project and are within the scope of Type II MUP appeal
25 decisions. SMC 2376.006 - *Master Use Permits required C1. The following procedural*
26 *environmental decisions for Master Use Permits and for building, demolition, grading, and other*
27 *construction permits are subject to appeal to the Hearing Examiner.* Objections 1, 2, 3, 4, 8 and
28 9, Errors and Omissions 1, 2, 3, 4, and 5 a and b Relief request fall squarely inside the
29 Jurisdiction of the Hearing Examiner as each meet Code criteria. Applicant's Survey requires
30 setbacks from Appellant's property SMC 23.47A 014

31
32 Objections 1,2,3,4,8 and 9, Errors and Omissions 1, 2, 3 and 4, and Relief request 5 a and b
33 appropriately raises land use and design review issues as they relate to MUP and for building,
34 demolition, grading, excavation and other construction permits excavation permits applied for

1 under the Project and requirements thereto. SMC 23.41.06 These claims should not be
2 dismissed. The Director must enforce the standing Code. The Director's design review decision
3 is part of the overall Master Use Permit decision for the Project. *The Director's decision shall*
4 *be based on the extent to which the proposed project meets the guideline priorities and in*
5 *consideration of public comments on the proposed project. A decision on an application for a*
6 *permit subject to administrative design review shall be made by the Director.*

7
8 The appeal process is designed to allow a directly and negatively affected property owner or
9 interested person in the permit to challenge the Director's decisions for MUP and for building,
10 demolition, grading and other construction permits and are subject to appeal to the Hearing
11 Examiner SMC 23.76.006 and 23.76.002. Applicant's Motion to Partially Dismiss must be denied.
12

13 **H. The Guidelines in the Design Review Process are codified**

14 The Guidelines in the Design Review Process are codified. SMC 23.41.016. These Guidelines
15 regulate the improvement, development, modification, maintenance or use of real property in
16 Seattle. If these Guidelines were irrelevant there would be no need for the Design Review Board
17 or the Director to enforce Chapter 23 of the standing Code or ensure that all development projects
18 follow the preset guidelines listed in Code. SMC 23.41.06.
19

20 **I. The Director is not exempt from Enforcing the standing Code or Guidelines**

21 Applicant does not identify any Code or Guideline that stipulates that the Director is exempt from
22 enforcing the Seattle Design Guidelines or exempt from enforcing Code Criteria for MUP and
23 related permits.
24

25 **J. SMC 23.76.031 – If a Master Permit is issued a building permit is issued for the project**

26 If a Master Use Permit is issued for a project, a building permit is issued for the project, and
27
28 the project is constructed under the building permit. The following procedural environmental
29 decisions for a Master Use Permit and for building, demolition, grading, and other construction
30 permits are subject to appeal to the Hearing Examiner. pursuant to Section 23.76.036.

31 Applicant's Motion for Partial Dismissal must be denied.
32
33
34

1 **K. SMC 22.170.200 Protection of Adjoining Property**

2
3 The Director's decision to approve Master Use Permit 3038146 LU, including a soil and nail
4 permit under 679534-CN, a demolition, excavation, grading and crane permit under 6795635-
5 DM is in error. The procedural requirements for the above-mentioned permits under the
6 standing Code have not been enforced.
7

8 **L. The Project Encroaches on Appellant's property**

9
10 Objections 2, 3, 4, 8 and 9 Errors 2, 3 and 4, Request for Relief 5 should not be dismissed.
11 The Project encroaches on Appellant's property. An "encroachment" is [a]n infringement of
12 another's rights" or "a[n] interference or intrusion onto another's property." Black's Law
13 Dictionary 667 (11th Ed. 2019) An encroachment is a form of trespass. *Proctor* 169 Wn.2d at
14 496. §§ 23:9, :12, at 641, 646-47 (1990). *Traditionally, a property owner had an absolute right*
15 *to eject trespassers –and to require them to remove encroaching structures even - if trespassers*
16 *believed in good faith that the land was theirs. See 7. STUART M. SPEISER, CHARLES F.*
17 *KRAUSE, ALFRED W. GANS, THE AMERICAN LAW OF TORTS. This form of relief is a type*
18 *of "property rule" See generally Guido Calabresi A. Douglas Melamed, "Property Rules, Liability*
19 *and Inalienability: One View of the Cathedral, 85 HARV L.REV.1089(1972)." Property Rules are*
20 *characterized by all-or-nothing relief afforded to the party who is considered to have the legal*
21 *right. See id.1105-06 (contrasting injunctive relief with an award of damages).*

22 The Director did not enforce the standing Code. By not enforcing the standing Code for grading
23 permits, demolition permits, excavation permits, and soil and nail permits creates an action for
24 intentional trespass. An action for intentional trespass is recognized in Washington State. *Wash.*
25 *Rev. Code § 4.16.080 Bradley v. American Smelting* 104 Wn. 2d 677, 691 (Wash. 1985). At
26 common law any trespass entitles a landowner to recover nominal or punitive damages for the
27 invasion of his *property. An "encroachment" is [a]n infringement of another's rights" or "a[n]*
28 *interference or intrusion onto another's property." Black's Law Dictionary 667 (11th Ed. 2019) An*
29 *encroachment is a form of trespass. Proctor 169 Wn.2d at 496. §§ 23:9, :12, at 641, 646-47*
30 *(1990). Traditionally, a property owner had an absolute right to eject trespassers –and to require*
31 *them to remove encroaching structures even - if trespassers believed in good faith that the land*
32 *was theirs. See 7. STUART M. SPEISER, CHARLES F. KRAUSE, ALFRED W. GANS, THE*
33 *AMERICAN LAW OF TORTS. This form of relief is a type of "property rule" See generally Guido*

1 *Calabresi A. Douglas Melamed, Property Rules, Liability and Inalienability: One View of the*
2 *Cathedral, 85 HARV L.REV.1089(1972) Property Rules are characterized by all-or-nothing relief*
3 *afforded to the party who is considered to have the legal right. See id.1105-06 contrasting*
4 *injunctive relief with an award of damages.* Appellant has Posted "NO TRESPASSING" signs on
5 the front, the side and on the back of its property. **See EXHIBIT 3. Declaration of Cathryn Reid**
6 *Trespass.*

7 Applicant falsely asserts that Appellant's claim to its property rights have no merit or basis in
8 law. Appellant disagrees. Applicant's Project does not supersede Appellant's property rights
9 and neither are Appellant's property rights unimportant to the appeal or to MUP. The Director
10 approved Applicant's Master Use Permit conditionally but did not enforce the Code which
11 requiring Applicant submit signed easement agreements from adjoining fee property owners .
12 The Director's decision to approve the MUP is in error. SMC 22.170.200 A. B. C and D. In a
13 document titled Michels® SDCI asserted in "Design Submittal Comments" dated 01/04/23
14 numbered Comment 1, 2, 3, 4 and 5 respectively. In Comment 2 Specifically assert that under
15 the Ordinance Applicant had to secure an easement from Appellant. **See EXHIBIT 4**

16 **M. Claims alleging traffic and parking impact must not be dismissed.**
17

18 When Appellant filed its appeal Appellant did not have to cite an applicable Code provision.
19 Appellant was to provide reasons why Appellant was objecting to the approved MUP. It is
20 specious for Applicant to assert that the Project will not disrupt the surrounding street parking or
21 interfere with Appellant's access to its driveway and garage. The proposed Project is estimated
22 at taking two or more years to complete. The parking on E. Thomas and 15th Avenue East is
23 already severely limited because only one side of E Thomas has parking. Appellant is currently
24 forced to share street parking North of E, Thomas Street and 15th Avenue East with Group Health
25 Hospital. The proposed Project will absolutely disrupt street parking. Applicant requires a permit
26 for work in the right of way. The right of way will negatively affect Appellant property. SMC
27 15.04.10.
28

29 Applicant does not cite any Code that permits the subjugation of one property owner's rights
30 over another property owner's rights. Objection 6, Error 12 and requests for relief at 4 should
31 not be dismissed. *(There is no point 4 at page 8. Appellant made an error in numbering the*
32 *point for 4 at Relief.)*
33

1 **N. Appellant's claims do not challenge the standing Code**

2 Appellant claims call for the Director to enforce the standing Codes and Guidelines.

4 **O. Tree Canopy**

5 “Seattle’s most recent tree canopy study, published in March, 2023, found that the city lost 255
6 acres of tree canopy since 2016 – an area the size of Green Lake. For decades, community
7 groups and coalitions have been working to advocate for trees, raising awareness of the alarming
8 loss and mobilizing residents in support of new growth. While grassroots movements are effective
9 at raising awareness of issues with Seattle’s Tree Ordinance, we aim to ensure progress is made
10 through collaborative advocacy <https://www.seattle.gov/trees/management/canopy-cover>

11 Appellant’s Objection 10 Error 6 ,7 8, 9 and Relief 1, 2 and 5 should not be dismissed. Appellant
12 claims and assertions are codified under 25.11.010, Seattle Design Review CS1 D1, DC3 C3(b)
13 and SMC 25.11.060 and SMC 22.170.200. See: *Design Review: On Site Features: Incorporate*
14 *onsite natural habitats and landscape elements such as: existing trees*. The Director’s decision
15 does not comply with Director’s Rule 7-23 which protects Tier Two Trees. **See EXHIBIT 5.**

16 An SDCI exemption to remove Tier Two trees based on disease, hazard or emergency does not
17 apply here. The six (6) Tier Two trees were flourishing. **See EXHIBIT 6.**

18 This canopy is E Thomas Street and 15th Ave East and are directly on Appellant’s boundary line.
19 The trees are used as a buffer. The Two Tier trees range in size from: 31 inches, 35 inches, 45
20 inches 60 inches, 67 inches and 71 inches. Applicant who is not the owner of the Safeway
21 property applied for a permit under MUP to “trim” trees over power lines and to prepare for
22 construction. See Record Number SDOTTREE 5245 on or about May 2023. The Project was not
23 approved until September 18, 2023. Seattle City Light noted there were no problems with the
24 trees and power lines. The trees did not need trimming. The Code, the Design Review Guidelines
25 or SDCI Rules have not been followed or enforced. The 25 year old tree canopy was hacked
26 and topped. **See EXHIBIT 7. Cathryn Reid Declaration - Trees**

27 **P. The Tree canopy falls on Appellant’s and Applicant’s boundary lines and or property**
28 **lines** The canopy of (6) Tow Tier trees between E. Thomas and 15th Ave East fall on Appellant’s
29 and Applicant boundary line on East Thomas. Applicant’s tree permit did not allow the mutilation,
30 defacement and injury to six (6) 25 year old Two Tier Trees in a Tree Canopy adjoining Appellants
31 property. Applicant’s survey of the site shows the tree canopy is shared by Appellant’s adjoining

property and creates a vested property right in the tree canopy on Appellant's boundary line. SMC 15.43.020 - Tree preservation and protection. No person shall destroy, kill, injure, mutilate, or deface a street tree or vegetation in a public place by any means.

The standing Code stipulates that an existing tree canopy should be maximized and that mature plantings should be integrated into the design. Removing mature conifer trees is contrary to the standing Code. 25.11.010, Seattle Design Review CS1 D1, and SMC 25.11.060

Notwithstanding authorizing the destruction of an existing mature canopy of trees is a departure from the guidelines and the standing Code. Appellant asserts that Applicant encroaches onto Appellant's property rights when the Director authorized the destruction of a shared mature canopy of trees on Appellant's boundary lines. *Happy Bunch v. Grandview* 142 Wn. App. 81 (Wash. Ct. App. 2007) • 142 Wash. App. 81 • 173 P.3d 959. Decided Dec 3, 2007

See EXHIBIT 8

Q. Fence and Walls

The wood fence, brick walls and concrete retaining walls shown in the Project are shared and or fall on Appellant's property lines creating vested property rights in the wood fence, brick walls and concrete retainer walls. Applicant's survey shows where subjects walls, fence and concrete retainer walls are shared by Appellant property. Applicant has not invalidated Appellant's claims and assertions of Appellant's vested property rights in the wood fence, the walls and the concrete retainer walls. The wood fence is bolted onto Appellant's concrete retainer wall. The subject walls and concrete retainer walls are built directly on Appellant's property lines and have been shared by Appellant and the adjoining Safeway property for about 25 years. Applicant's survey submitted to the Design review Board and the Director reflects the encroachment on Appellant's property. The Director is in error when approving MUP. Appellant's property is encroached by the Project. and Objections 1, 2, 3, 4, 5, 7, 8, 9 and 10, Errors 1, 2, 3, 4, 5, 6 and Relief 5 should not be dismissed. **See EXHIBIT 9**

R. Design Claims must not be dismissed when they are based on the standing Code and Guidelines. Applicant is factually wrong by stating the Design Review Guidelines are only for residential buildings. The "residential units" and not for a "church" 22-22 at 9 Applicants Motion for Partial Dismissal. Applicant mis-construes the Design Review Guidelines. PL3-B-1. "Security

1 and Privacy: Provide security and privacy for residential buildings through the use of a buffer or
2 semi private space between the development and the street or neighboring buildings. *Emphasis*
3 *added.* The Guidelines in PL3 -B-1 do not distinguish between buildings only that there should be
4 a buffer or semi-private space between neighboring buildings. *Emphasis added.* The Design
5 Review Guidelines are codified. SMC 23.41.010 Design Review Guidelines, A and B. The Design
6 Review Guidelines are a standard for all neighborhoods and all communities.

7
8 Appellant did not have to submit every code and every Design Guideline in its appeal. Appellant
9 was instructed to describe its interest in the appeal, Appellant's objections, errors and omissions,
10 or other problems with the issues involved in the Director's decisions, and finally Appellant was
11 to include remedies to these issues and claims. Appellant's issues and claims have not been
12 determined by the Hearing Examiner. To limit Appellant's claims and issues before they have
13 been determined is prejudicial.

14 The SDCI website asserts "design guidelines are the backbone of the Design Review Program.
15 [T]hey direct designers and project reviewers to look closely at the neighborhood and its character
16 to design new buildings that enhance their surroundings. *Emphasis added.* Mix old with the new.
17 The guidelines are used by the Design Review Boards and our staff to assess the merits of a
18 project. The Seattle Design Guidelines apply to all projects required to undergo design review in
19 all areas of the city except Downtown* *Emphasis added.* [https://www.seattle.gov/sdci/about-](https://www.seattle.gov/sdci/about-us/who-we-are/design-review)
20 [us/who-we-are/design-review](https://www.seattle.gov/sdci/about-us/who-we-are/design-review)

21 Appellant's Objections 5 and 7 and 8, Error and Omissions 5, 6, 7, 8, 9 and 10 and Relief 1
22 should not be dismissed as these claims fall within the Code criteria of the standing Code and the
23 codified Design Review Guidelines:

24 CS1-D1; CS2-D-5 *Respect for Adjacent sites*; CS2-D *Height, Bulk, and Scale*; CS2-D-1.
25 *Existing Development and Zoning*: Review the height, bulk, and scale of neighboring
26 buildings as well as the scale of development expected by zoning for the area to determine

27 a proper complement and/or transition; CS2-D-2. *Existing Site Features*: Use changes in
28 topography, site shape, and vegetation or structures to help make a successful fit with
29 adjacent properties; CS2-D-3. *Zone Transitions*: For projects at the edge of different
30 zones, provide an appropriate transition or complement to the adjacent zone(s). Projects
31 should create a step in perceived height, bulk and scale between the anticipated

development potential of the adjacent zone and the proposed development; CS2-D-4. *Massing Choices*: Strive for a successful transition between zones where a project abuts a less intense zone. CS2-D-5. *Respect for Adjacent Sites: Privacy*. Respect adjacent properties with design and site planning to minimize disrupting the privacy of residents in adjacent buildings. CS3-Aa: Emphasizing Positive Neighbor Attributes CS3-A-1. *Fitting Old and New Together*: Create compatibility between new projects, and existing architectural context, including historic and modern designs, through building articulation, scale and proportion, roof forms, detailing, fenestration, and/or the use of complementary materials. CS3-A-3. Established Neighborhoods: In existing neighborhoods with a well-defined architectural character, site and design new structures to complement or be compatible with the architectural style and siting patterns of neighborhood buildings. DC2-3. *Fit With Neighboring Buildings*: Use design elements to achieve a successful fit between a building and its neighbors, such as: considering parts of neighboring buildings through architectural style, roof line, datum line detailing, fenestration, color or materials, using trees and landscaping to enhance the building design and fit with the surrounding context, and/or 1. creating a well-proportioned base, middle and top to the building in locations where this might be appropriate. Consider how surrounding buildings have addressed base, middle, and top, and whether those solutions—or similar ones—might be a good fit for the project and its context.

Applicant has mis-construed Residential Edges PL3-B Security and Privacy. Provide security and privacy for residential buildings through the use of a buffer or semi-private space between the development and the street or neighboring buildings. *Emphasis added*

S. Height, Bulk and Scale

Appellant's Objections 5, 7 and 9, Errors and Omissions 5, 6, 10, 11, 13 and Relief 1 should not be dismissed. CS2-D-1 Existing Development and Zoning. Review the height, bulk and scale of neighboring buildings as well as the scale of development anticipated by zoning for the area to determine an appropriate complement and or transition.

Guideline CS2-D-2, CS2-D-3 CS2-D-4 and CS2-D-5 each address Appellant's claims about the Height, Bulk and Scale of the Project. The Guidelines call for transparency for Seattle citizens. The Guidelines and Code are not one sided. The Codes and Guidelines benefit all citizens if applied judiciously.

SMC 23.47a.02 specifies that negative impact of shadow and loss of daylight are issues for an adjoining property owner. Applicant does not deny that the Project requires a setback of 10ft from Appellant's Adjoining property. The "Shadow" diagrams that Applicant submitted to the Design Review Board and to the SDCI show there is a significant negative impact on Appellant's property.

The negative impact of shading on Appellant's property is a valid claim under the Code and the Guidelines. Design Review Guidelines addresses daylight and shading. CS - B1 Daylight and Shading: Maximize daylight for interior and exterior spaces and minimize shading on adjacent sites through the placement and or design of structures on site. The Guidelines and Code does not assert that an "adjacent site" must be a residential building. Commercial buildings and churches are not excluded from the Code or Guidelines

Applicant submitted a daylight and shading study (Shadow Study) to the SDCI and the Design Review Board. On page 33 of the Project's 121 page *Graystar Capitol Hill 1410 East John Street, Seattle WA 98112 "Master Use Permit" dated 03-24-2022* the shadow study clearly identifies how shadows significantly and negatively affect Appellant's property. *Emphasis included.* **See**

EXHIBIT 10

T. Fairness

Appellant objects to Applicant's request to the Examiner to limit Appellant's claims and hearing presentation regarding the design issues to the assertions in the Notice of Appeal based on applicable guidelines. The appeal process is so designed that appeals may be started by any people significantly affected by or interested in the permit. Applicant is significantly affected by the MUP. The Appellant has a right to present its claims and its hearing presentation within a fair review. In the interest of a fair adjudication of the facts on appeal it is not appropriate for Applicant to ask for the Hearing Examiner to limit Appellant's claims or hearing presentation regarding the design issues and claims Appellant has raised in its appeal.

Appellant reserves its right to raise issues identified in the Notice of Appeal based on applicable Guidelines and the standing Code in its Notice of Appeal. Appellant reserves its right to raise more parts of Applicant's Motion for Partial Dismissal that Applicant has identified in its Motions and/or in a hearing presentation as supported by Guidelines and the standing Code that are within the Hearing Examiner's Jurisdiction.

1 Appellant asserts that the Code, SDCI Rules, Design Review Guidelines, and RCW must be
2 applied judiciously by the Director, the Hearing Examiner, relevant courts, judiciaries and
3 governing bodies.

6. CONCLUSION

7 For the reasons stated in this OBJECTION AND ANSWER to Applicant's Motion for Partial
8 Dismissal, Appellant moves that the Hearing Examiner deny in full Applicant's Motion for Partial
9 Dismissal.

11 DATED this 22nd day of November, 2023

13 Rev. Jannifer A. Werner. *s/ jannifer a. werner*

14 Authorized Representative for Appellant

16 Aquarian Foundation, Inc.

17 315 15th Avenue East

18 Seattle WA 98112

19 Tel 206-324-6046

20 Fax: 206-328-2365

21 Email: info@aquarianfoundaiton.com

22 Appellant.

1 **CERTIFICATE OF SERVICE**

2
3 The undersigned hereby certifies that I am employed by Aquarian Foundation, Inc, I am over the
4 age of eighteen and I am a party within cause. On the date written below, a true and correct copy
5 of the foregoing document was filed with the City of Seattle Hearing Examiner and copies served
6 via email to:

7
8 David Sachs SDCI
9 700 5th Avenue #2000
10 Seattle WA 98104
11 Email: david.sachs@seattle.gov
12

13 Jessica Clawson WSBA # 36901
14 David Chapman WSBA #54753
15 Isaac Patterson WSBA #60255
16 Attorneys for Applicant
17 McCULLOUGH HILL PLLC
18 701 5th Avenue Suite 6600
19 Seattle WA 98104
20 Tel: 206-812-3388
21 Fax: 206-812-3398
22 Email: jessica@mhseattle.com
23 Email: dcarpman@mhseattle.com
24 Email: ipatterson@mhseattle.com
25

26 I declare under the penalty of perjury under the laws of the State of Washington that the foregoing
27 is true and correct and that this declaration was executed on the 22nd day of November, 2023 at
28 Seattle, Washington.
29

30 Rev. Cathryn M. Reid *s/cathrynreid*
31 Aquarian Foundation, Inc.,
32 315 15th Avenue East
33 Seattle WA 98112
34 206-324-6046
35 info@aquarianfoundation.com
36