

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In RE: Appeal by

AQUARIAN FOUNDATION, INC

Hearing Examiner File:

MUP-23-011

Department Reference:

3038146-LU

from the September 18, 2023 City of Seattle

Analysis and Decision of the Director of the Seattle

Department of Construction and Inspections.

APPELLANT'S CLOSING

ARGUMENTS

1. OBJECTION

Aquarian Foundation, Inc., (Appellant) is a registered 501(c) 3 religious organization. Appellant is the fee owner of 315 15th Avenue East, Seattle, WA 98112. The site for the proposed Project is 1410 E. John St. (Project's site) Appellant is the adjoining property owner to the Project site. The Project attorneys identified the Applicant for MUP 23-011 appeal as Jodi Patterson O' Hare.

At all times relevant Appellant was led to believe on all submissions, objections, orders and a variety of documents before the Hearing Examiner that the Applicant was Jodi Patterson O' Hare. On January 30, 2024, Attorney David Carpman, notified the Appellant that Jodi Patterson O' Hare was not the Applicant.

Despite Appellant's numerous objections that Attorney David Carpman could not speak on behalf of an unnamed Applicant the hearing on February 6, 2024 continued. Appellant's representative is not an attorney. Appellant was notified in no uncertain terms in a variety of instances in rulings and orders by the Hearing Examiner and on the Hearing Examiner's website that the hearing was a legal proceeding. Although it is understood that a hearing before the Hearing Examiner is not a court proceeding such as in Superior Court it is still a legal proceeding and all parties are required to comport themselves accordingly and follow the rules of civil procedure.

It was strongly condescended in the submissions, rulings and orders that Appellant's Representative did not understand the law. This is true. Appellant's Representative is not an attorney however Appellant's Representative can read. Appellant's Representative is not privy to the legal maneuverings of clever attorneys. It is incumbent upon a licensed and practicing attorney who is familiar with Washington Rules of Procedure to conduct themselves accordingly.

APPELLANT'S CLOSING ARGUMENTS

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

1 At the onset of the MUP appeal Attorney David Carpman and Associates had a duty to notify
2 Appellant who the Real Applicant was in Appellant's appeal of the SDCI ruling on September 18,
3 2023 for MUP 23-011. Appellant has been regarded as a nuisance when in fact Appellant has
4 very real property rights and very real legal rights which are embedded in the Revised Washington
5 Code, the Seattle Building Code, the Seattle and Capitol Hill Design Guidelines, and the
6 Washington State Constitution and the United States Constitution. *Eastlake Com. Coun. v. Roanoke*
7 *Assoc.* 82 Wn.2d 475 (Wash. 1973)

8 **2. APPELLANT HAS THE RIGHT TO A FAIR HEARING.**
9 **FAIRNESS BEING THE OPERATIVE WORD.**

10 For Appellant to be notified half way through the hearing that **"everyone knows who the**
11 **Applicant is"** is ludicrous and is contrary to the Rules of Civil Wash. Sup. Ct. Civ. R. CR 17 (As
12 amended through January 3, 2024). *Rule CR 17 - Parties Plaintiff and Defendant; Capacity (-) Designation of*
13 *Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.*
14 *(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest.*

15 It is not ethical or appropriate for it to be left to the Appellant's speculation or conjecture as to who
16 the Applicant is in the Appeal. Attorney David Carpman's email to Appellant on file in the Hearing
17 Examiners portal states that Applicant Jodi Patterson O' Hare is not the real party of interest in
18 this MUP appeal. See Carpman email: "On Monday, 29 January 2024 at 5:07 PM, David Carpman
19 <dcarpman@mhseattle.com> wrote: "Dear Ms. Reid, I am writing on behalf of Austin Besse, Natalie Quick, and **Jodi**
20 **Patterson-O'Hare** in response to your January 24, 2023 (sic) emails to them regarding the question of a fee
21 arrangement for their testimony. As these are members of the Applicant's project team, **I request that you direct**
22 **any further communications regarding this issue to me and my colleagues Jessica Clawson and Isaac**
23 **Patterson – the Applicant's representatives in this hearing.** Mr. Besse is included on the Applicant's witness &
24 exhibit list and will be testifying during the hearing. As a result, he will be available for you to cross examine, and we
25 will not object to questions to him on the basis that they are beyond the scope of the direct examination (without waiving
26 objections as to relevance or any other issue). Mr. Besse will not require a fee from the Aquarian Foundation for this
27 testimony and thus we do not see a need for a subpoena compelling his presence. Ms. Quick and Ms. Patterson-
28 O'Hare do not wish to testify and decline to make a fee arrangement. We agree with the Examiner's January 24,
29 2023(sic) Order declining to waive the untimeliness of the subpoena requests for these witnesses. In addition, we do
30 not believe that Ms. Quick and Ms. Patterson-O'Hare have relevant testimony to share, and we would oppose their
31 being subpoenaed on that basis. Ms. Quick is an outreach consultant, and Ms. Patterson-O'Hare is a permit
32 expediter; neither is a design professional with expertise on the issues within the scope of this hearing". **Emphasis**
33 **added by Appellant.**

34 Appellant again raises its objection to the proceedings for unfairness, lack of transparency and
35 the obstruction of Appellant's appeal, namely: 1. the proceedings violated Washington Civil
36 Practice Rules when the Real Party of Interest was not identified on any document before the
37 Hearing Examiner, SDCI or Appellant 2. Appellant's right to question witnesses of its choice
38 relating to the project was circumvented and obstructed. All parties were notified on January 11,
39 2024 which witnesses Appellant would call upon for testimony. Emails were sent to all witnesses.
40 Natalie Quick did not object to being a witness for Appellant. Natalie Quick and Austin Besse were
41 not represented by Attorney David Carpman and yet Austin Besse became Attorney Carpman's
42 witness. It is not up to an attorney for an unknown party to decide what was relevant for
43 Appellants' arguments. Mr. Carpman did not indicate that it was a mistake that he and his
44 associates did not reveal the Real party opposing the Appellant, therefore one can only conclude
45 that this was a deliberate attempt to obstruct Appellant's appeal and deliberately keep from the

APPELLANT'S CLOSING ARGUMENTS

2

1 public who the Real Party is in the Project. What Appellant does know is that the Applicant is not
2 Jodi Paterson O' Hare as she is simply a "permit expediter".

3 "----- Forwarded Message -----"

4 From: David Carpman <dcarpman@mhseattle.com>

5 Date: On Tuesday, 30 January 2024 at 10:49 AM

6 Subject: RE: MUP-23-011 witness emails

7 To: Cathryn Reid <creidbiz@protonmail.com>

8 CC: Jessica Clawson <jessica@mhseattle.com>, Isaac Patterson <ipatterson@mhseattle.com>,
9 david.sachs@seattle.gov <David.Sachs@seattle.gov>, info@aquarianfoundation.com

10 <info@aquarianfoundation.com> Ms. Reid: McCullough Hill PLLC does not represent Mr. Besse or Ms. Quick. We

11 are responding on their behalf concerning this hearing. David Carpman Attorney"

12 13 3. APPELLANT DENIED THE RIGHT TO ITS WITNESSES

14
15 RCW Section 12.16.020 - Service of subpoena

16 A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering
17 to him or her a copy at his or her usual place of abode.

18 Appellant called Joe Riley a member of the East Design Review Board as a witness. Joe Riley
19 took notice of the emails to him prior to Appellant sending a subpoena. Appellant's email to Mr
20 Riley was to request him as a witness. Mr. Riley was dismissed on the grounds that Appellant's
21 subpoena was untimely and that Mr. Riley would have nothing to offer as a witness. Appellant's
22 Representative had authority to subpoena and to have witnesses she felt necessary to Appellant's
23 appeal without obstruction from Attorney Carpman and Associates. See RCW Section 12.16.060 - Party
24 to action as adverse witness. A party to an action may be examined as a witness, at the instance of the adverse party,
25 and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any
26 other witness, to testify at the trial, or appear and have his or her deposition taken. See: Amendments to Rules of Court
27 148 Wn.2d 1101, 1103 (Wash.2003) (a) Subpoenas. The Chair of the Board, Hearing Officer, or designated attorney
28 shall have the power to issue subpoenas. 4. An Attorney is not the Real Party of Interest. If the Real
29 Party of Interest chooses not reveal themselves on legal documents then they cannot and must
30 not be party to the appeal. RCW Section 4.28.210 - Appearance, what constitutes. A defendant appears in an
31 action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice
32 of his or her appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a
33 defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made
34 upon him or her. Every such appearance made in an action shall be deemed a general appearance, unless the
35 defendant in making the same states that the same is a special appearance.

36 Appellant had the right to know who is opposing its appeal and to know the Real Party of interest.
37 See State v. Stimson 41 Wn. App. 385 (Wash. Ct. App. 1985) An attorney is an officer of the court. As such, he owes
38 it a duty of frankness and honesty. When an attorney makes a formal appearance for a party, the party "appears", not
39 the attorney. 78 Wn. App. 13 (Wash. Ct. App. 1995) Tiffin v. Hendricks, 44 Wn.2d 837, 271 P.2d 683 (1954). An
40 attorney whose client has not appeared in the action has no standing before the court. State ex rel. Gardner v. Superior
41 Court, 186 Wn.134,137, 56P.2d 1315 (1936).

42 43 4. OBJECTION TO WITNESS TESTIMONY PRESENTED BY ATTORNEY DAVID CARPMAN

44
45 Appellant objects to the entirety of the testimony presented by Attorney David Carpman's
46 witnesses but will still use their testimony in the closing argument. Attorney Mr. Carpman did not

1 identify the real identify the Real Party this project. In fairness to due process all testimony for an
2 unnamed Applicant should be stricken from the record as there is no Real Party named as
3 Applicant. It is logical to ask the purpose of the testimony. It wasn't to support Jodi Patterson O'
4 Hare as she was simply the permit expediter and was not involved with the design of the Project.
5 Mr. Carpman established by email to Appellant that the Applicant is not Jamie Patterson O' Hare.
6 Tip 242 A (Appellant's Exhibit 14) regarding preservation of the Seattle Tree Canopy, was denied as
7 relevant to Appellant's appeal allegedly because Tip 242A is not part of the Seattle Building Code
8 that the applicant was using for this Project. This is contradictory to Mr. Sachs' testimony. Mr.
9 David Sachs' testified he noted that the applicant had withdrawn their SEPA application (SDCI
10 Exhibit 36) based on a revision of the law in July 2023.... Tip 242A is applicable to the Project.
11
12

13 **5. THE PUBLIC AND THE APPELLANT HAVE A RIGHT TO KNOW WHO THE** 14 **REAL PARTIES ARE TO APPELLANT'S MUP 23-011 APPEAL.** 15

16 Appellant restates its objection to Mr. Carpman being allowed to present witnesses or even be
17 part of the hearing due to the lack of transparency because the Real Party of Interest was not
18 named or listed on any and all documents presented to Appellant, SDCI and the Hearing
19 Examiner. Appellant also notes for the record that Mr. Carpman's witnesses were not credible.
20

21 **AUSTIN BESSE**

22 Mr. Austin Besse, a witness presented by Attorney David Carpman, testified that he was the
23 senior lead designer for Weber Thompson. Mr. Austin Besse also was testifying as an expert
24 witness for Attorney Carpman. Mr. Besse presented a very impressive resume of his formal
25 training and career.
26

27 Strangely Appellant's screen-share was disabled when it came time to cross examine witness
28 therefore Appellant could not refer to specific Exhibits. The record reflects that SDCI's Exhibit 14a
29 and Exhibit 16 is accepted into the record and therefore can be used to contradict testimony.
30

31 Under cross examination Mr. Besse stated that he was unaware that the Project site consisted of
32 several lots. Reflected in the record: " REV. WERNER: ON THIS 15TH AVE EAST SECTION ... LET ME REPHRASE ...THIS
33 SITE IS MADE UP OF SEVERAL LOTS. IS THAT CORRECT? MR BESSE: THE PROJECT SITE? NO, IT'S A SINGLE LOT REV.
34 WERNER: OK, BUT PRIOR TO THAT. IT HAD SEVERAL LOTS, RIGHT? MR BESSE: PER THE HISTORIC MAPS THAT WE HAD
35 DISCOVERED, YES IT HAD BEEN IN THE 1900s COMPRISED OF DIFFERENT LOTS. REV. WERNER: WHAT ABOUT 1990s WHEN LOT
36 RIGHT NEXT TO AQUARIAN FOUNDATION WAS SOLD TO THE SAFEWAY PROJECT.. THAT WAS A SEPARATE LOT IN 1990 THAT
37 WASN'T 1900s? MR BESSE: I DID NOT LIVE IN SEATTLE AT THE TIME. I DID NOT KNOW ABOUT THAT AT ALL REV.
38 WERNER: WOULDN'T THAT SHOW WHEN YOU RESEARCHED THE PLAN SITE? WOULDN'T THAT SHOW IT? THAT THERE WERE
39 DIFFERENT LOTS THAT WERE TOGETHER? MR BESSE: THERE ARE ONLY SO MANY MAPS AVAILABLE THAT WE FOUND... NO I'M
40 UNAWARE OF THAT BUILDING CONFIGURATION REV. WERNER: THE SURVEY OF THIS PARTICULAR SITE DID NOT POINT THAT
41 OUT? THAT THERE WERE SEPARATE LOTS AT ONE POINT? MR BESSE; SURVEY THE SITE AS IT EXISTS TODAY. REV.
42 WERNER: OK JUST BASED ON THAT IF YOU DON'T KNOW BUT I AM GOING TO POINT THIS OUT TO YOU - IF YOU LOOK AT THE
43 DEED FOR THIS PARTICULAR PROPERTY MR CARPMEN: OBJECTION THAT IS NOT A QUESTION REV. WERNER: I'M SAYING THAT
44 IF YOU LOOK AT THE ON DEED. 15TH AVE E, THIS IS WHERE THE SITE IS? MR BESSE: CORRECT REV. WERNER: AND IT ALSO
45 SORT OF LIKE BUMPS INTO EAST THOMAS STREET. THIS IS EAST THOMAS STREET. HERE IS EAST THOMAS STREET AND 15TH
46 AVE EAST WHAT I WANT TO KNOW IS WERE YOU ABLE TO GET A VARIANCE FROM THE CITY ON THE VACATED EAST WILLIAMS
47 COURT AS VACATED BY CITY ORDINANCE IN THIS AREA HERE? WERE YOU ABLE TO GET A VARIANCE FOR THAT? MR BESSE: I
48 DON'T KNOW WHAT YOU ARE REFERRING TO? REV. WERNER: ON THE LOT THERE IS A VACATED EAST WILLIAMS COURT... PART
49 OF THIS, THAT ACTUALLY BELONGS TO THE CITY. AND IT SAYS THAT. IF YOU LOOKED AT THE DEED AND YOU WOULD HAVE
50 LOOKED AT THAT IF YOU WERE CREATING THIS PLAN THAT THERE IS A PORTION OF THIS - OF YOUR DEED - THAT IS EXEMPT
51 FROM BEING USED BECAUSE IT IS A VACATED PORTION OF THE EAST WILLIAMS COURT BY THE CITY OF SEATTLE. DID YOU
52 GET A VARIANCE FOR THAT? "
53

1 Exhibit 14a and Exhibit 16 opened the door to questions about the design of the Project. Shoring
2 permits and demolition permits are an important part of the review process. Without these permits
3 the Project could not start. The design must comply with local ordinances. The ordinances are
4 identified the project design. The ordinances reflected on the design and plans must be
5 incorporated into the design plan. The Project design is not following the ordinance 120754 that
6 stipulates that tree canopies must be provided along the lot lines for privacy to the Safeway
7 neighbors which is why there are 25 year old tree canopies on lot lines of the adjoining properties.
8 Mr. Smith and Mr Besse admitted in their testimony the tree canopies were planted specifically
9 for privacy for the adjoining properties. Mr. Besse testified that the wall of one of the buildings of
10 the Project would replace the tree canopy that provides privacy to Appellant. Trees for privacy are
11 what is stipulated in Ordinance 120754.

12
13 Ordinance 120754 stipulates that trees must be planted for privacy of the residents which
14 included Appellant, which is why there is a 25 year old tree canopy along the lot lines of all
15 adjoining properties. Exhibit 16 stipulates that written agreements and permission are required
16 from Adjoining Property Owners before the SDCI could authorise building permits for the Project.
17 SDCI's David Sachs stipulated in his testimony that unless there are written agreement for
18 easements a building permit cannot be issued for the Project. Appellant has stipulated ad-
19 nauseam that Appellant has not given written permission for encroachments onto its fee simple
20 property. Appellant's witness Cathryn Reid testified in her Declaration see Exhibit 13 that she had
21 very little communication with relevant people from the Project. Mr. Besse testified he had not
22 approached the Appellant and he knew of no one else on the Project who had approached
23 Appellant. Other than attempts at coercing Appellant to sell its fee-simple property and attempts
24 by Natalie Quick to threaten Appellant into signing written agreements with unknown parties to
25 allow encroachment on Appellant's property. The SDCI has stipulated that building permits will
26 not be issued for this project unless there are written agreements for the easement.

27
28
29 **SDCI's Exhibit 14a Titled: Correction Response Plan Set 1 and**
30 **SDCI's Exhibit 16 Titled: Shoring Plan Set 2**
31

32 Exhibit 14a clearly shows that on each of the 80 pages of the 89 page document of this Exhibit
33 that the Weber Thomson Logo and Business address is on the top left hand corner of each of the
34 80 pages. Exhibit 14a clearly reflect that Weber Thompson created the 80 pages of the document
35 for SDCI. On page one of Exhibit 14a the Weber Thompson design document even shows that
36 permits applied for in the Project are shoring permits and demolition permits. By SMC these
37 permits cannot be issued without a written agreement from the adjoining property owner. Clearly
38 the shoring and demolition permits are part of the design process because these are required
39 elements to show SDCI how the design will be implemented and what is required for the execution
40 of the design to be acceptable. If shoring and demolition were not required in the Project these
41 items would not need to be considered by SDCI and the Design Board as to whether the Project
42 met SDCI's expectations.

1 On Page 19 of 89 of Exhibit 14a Titled Correction Response Plan Set 1 clearly shows on the
2 document that Project is made up of several blocks and within the blocks several lots. Page 20 of
3 89 of Exhibit 14a identifies the lots on the project and clearly indicates that of some of the lots
4 have a portion of East Williams Court vacated by the City of Seattle with Ordinance number
5 105018 that identify what parts of the lots are vacated. The vacated portion referred to in
6 Ordinance 105018 is a right of way for Public Use. What the MUP under that Ordinance 105018
7 required was for there to be an access pedestrian entrance located midblock on the West side of
8 15th Ave E. at E. Thomas Street. Safeway has conveniently chosen to ignore the ordinance
9 105018.

10
11 Ordinance 120754 stipulates that the MUP condition Safeway to build was to provide landscaping
12 between the parking and the adjacent residents. Safeway was required to provide tree canopies
13 between parking and the Appellant's property and the. adjacent properties which is why there are
14 tree canopies in those areas. The Ordinance doesn't stipulate that the tree canopy would change
15 if Safeway decided to build a new building or if a new owner decided to build a new building on
16 the lots affected. Neither Ordinances 120754 and 105018 have been changed.

17 Mr. Besse testified that he did "not know" of the vacated "by the City of Seattle" portion or of the
18 different lots that made up the Project site. It is improbable that Mr. Besse a highly qualified and
19 senior lead designer for Weber Thomson would arbitrarily incorporate irrelevant information hos
20 design. Mr Besse's design does show the block numbers, the lot numbers and the vacated
21 portions of East Williams Court because these they are significant to how to design the buildings
22 to comply the restrictions stipulated on the Ordinances.

23
24 As the senior lead designer for the Project, Mr. Besse gave an in-depth testimony of how the
25 Project was designed and why each element of his design was met with approval from the Design
26 Review Board and if an element of the design had not meet with approval from the Design Review
27 Board or SDCI Mr. Besse had made changes to his design and then re-submitted a corrected
28 design. Mr. Besse testified at length about his knowledge and familiarity with all the details of the
29 design and with the architecture. Mr. Besse testified for several hours as to his knowledge of all
30 the Design Codes.

31
32 Mr. Besse's immense knowledge of the details of the Project and his testimony as the senior lead
33 designer for Weber Thomson is evidence that he was aware of all minutia of the design for the
34 Project site. Nevertheless, Mr. Besse testified in cross examination that he did not have full
35 knowledge of the design drawings that showed the lots and the vacated portions by the City of
36 Seattle. Exhibits 14a and 16 contradict Mr. Besse's testimony. The Ordinances listed on the
37 design plans are the approved plans of by Weber Thomson of which Mr. Besse is the senior lead
38 designer. Ordinance 105018 clearly reflects that the Ordinance is making stipulation a right of
39 Way which is a street. Even if money was paid to the City to use the vacated portions, if the City
40 of Seattle is required to have access to the vacated portions of East Williams Court...*in the*
41 *reasonable original grading of any rights of way abutting upon said property* of the Project.

1 **DOUGLAS SMITH**

2 Attorney David Carpman relied on testimony from Expert Witness Douglas Smith. Attorney
3 Carpman concluded erroneously and without a shred of evidence that Appellant was merely
4 concerned about the pruning of the trees on East Thomas. Mr. Carpman further concluded
5 erroneously that a permit was not necessary for the trees to be pruned.

6
7 Mr. Carpman did not try to cross-examine Rev. Reid on her testimony, because he could not
8 discount her documented evidence of what actually happened to the tree canopies on E. Thomas.
9 Mr. Smith muddled the waters by testifying that the permit to cut the trees was for street trees and
10 the tree canopies on E. Thomas were not trees but hedges. The tree canopies were not planted
11 as a hedge. Mr. Smith and Mr. Besse testified to the fact that the tree canopies were planted as
12 a means of privacy for Appellant and for the other adjoining properties on E Thomas. That is a
13 accurate statement.

14
15 Ordinance 120754 stipulates that trees must be planted on the adjoining lots for privacy purposes.
16 Ordinance 120754 however does not stipulate that Appellant's property was excluded from the
17 tree planting requirement. The interpretation of the Ordinance is that Appellant is included as a
18 resident of the area and therefore trees were required to be planted along Appellant's lot line and
19 along the other adjoining property owners lot lines to ensure privacy from the Safeway Buildings.
20 A 6-foot fence installed along Appellant's property lot line is not stipulated in Ordinance 120754
21 as a privacy barrier. Ordinance 120754 stipulates that trees are the privacy barrier for Appellant
22 and other adjoining property owners and that stipulation is in effect.

23
24
25 If Mr. Carpman had bothered to look at Rev. Reid's Declaration (Appellant's Exhibit 12) he would
26 have seen that a permit was issued to cut trees for the 1410 E John Project. Rev. Reid's
27 unchallenged testimony and unchallenged Appellant Exhibit 12 shows that a permit is required
28 by SDOT to cut, prune, or plant trees on private property. Rev. Reid's testimony through her
29 Declaration proves that a permit is required to cut street trees and trees on private property. A
30 permit was issued to "cut back trees on power lines". The power lines are on Appellant's property
31 and photographs in Exhibit 12 where the power lines are located on Appellant's property.

32
33 Mr. Smith was not accurate in his testimony when he testified that a permit is not required for
34 trees to be cut on private property. The documented evidence provided by Rev. Reid indicate
35 that the SDOT permit that was issued was for the "*4 trees on the Northside of E John Street*
36 *between 15th Ave E and 14th Ave E. Those trees will remain... To construct the new building the*
37 *trees must be pruned back along the northside of the canopies to make way for the building...*"

38
39 Nowhere on the permit is it indicated that the tree canopies on E. Thomas should be cut or pruned.
40 Nowhere does the permit indicate that tree canopies on E. Thomas were allegedly hedges and
41 needed to be pruned, destroyed or removed. The subject tree canopies are protected by
42 Ordinance 120754. Ordinance 120754 must be considered when creating a design for the project.
43 Appellant contends that the removal of the tree canopies on Appellants lot line is contrary to law
44 and the Design Guidelines. Mr. Joe Riley was correct when he stated in a public presentation

1 that he could not see any reason for the tree canopy on Appellant's lot line to be removed. Not
2 only is there no reason to remove the tree canopies on Appellant's lot line removing the tree
3 canopies will be violating the stipulation in Ordinance 120754. All the Ordinances for the Project
4 site are clearly marked on the Weber Thompson plans see SDCI Exhibit 14a. These ordinances
5 are extremely relevant to the design and to the Project. Ordinance 120754 stipulates that trees
6 must be provided for privacy to adjoining owners. The Project Design is attempting to circumvent
7 the requirements of an ordinance designed to protect Appellant and the other adjacent property
8 owners.

9
10 Mr. Besse and Mr. Smith both testified that the tree canopies were planted as privacy barriers of
11 the adjoining properties on either side of E. Thomas which includes Appellant's property these
12 canopies cannot be removed as per the Ordinance. Appellant has enjoyed the privacy of the tree
13 canopy that was planted to provide privacy from Safeway. Appellant having derived a benefit of
14 privacy and wind protection by the tree barrier which was specifically installed for privacy has
15 rights to the tree canopy remaining in place. SMC 25.11 Tree protection limits the number size
16 and types of trees on private property...Trees are regulated because they are important to human
17 and environmental health.

18 19 20 **4. PROPERTY RIGHTS OF APPELLANT**

21
22 Appellant's property rights are memorialized in the appeal submissions and motions and closing
23 argument by Appellant. Appellant stipulates that the ordinances stipulate that vacated portions of
24 E. Williams Court is a right of way for the public. Appellant has been resident in the community
25 for 68 years but has somehow been disregarded and treated disrespectfully. The ordinances
26 protect Appellant's privacy as it protects the other adjoining property owners privacy. Privacy is a
27 very real property right. The ordinance stipulates privacy for Appellant by the tree canopy which
28 was planted on Appellant's lot line. Austin Besse insists that his design is respectful to Appellant.
29 Mr Besse testified that he has never taken the time to talk to Appellant or discuss the project
30 requirements with the Appellant. Mr. Besse also testified that he knew of no other individual of
31 significance from the Project that has taken the time to talk openly with Appellant about the design
32 or the Project even though Appellant's cooperation is required for the building of the Project if the
33 Project requires easements to come onto Appellant's property. It should not have been a foregone
34 conclusion by anyone that Appellant could be manipulated into giving up of its property rights.

35 36 **5. CONCLUSION**

37
38 Appellant's appeal is not about tree pruning. The Design guidelines specifically state that tree
39 canopies are to be preserved and the property rights of adjoining properties and the neighborhood
40 must be respected so there is balance for everyone involved. Appellant opposes the proposed
41 illegal removal of the tree canopies on E Thomas. Appellant has been a stakeholder in Capitol
42 Hill since 1955. While modernization for Seattle neighborhoods is inevitable it does not mean that
43 the new and modern can ride roughshod over the old. The Design Guidelines in MUP 23-011
44 have been applied to support a developer only and have not been used in balance to ensure all

1 needs of directly affected neighbors are supported. The City of Seattle is supposed to consider
2 all of its citizens not just the very powerful or wealthy. The neighborhood has not been taken into
3 consideration. Appellant's Exhibit 5 a1- 49 and 6 a 50-58 illustrates very succinctly the style of
4 the neighborhood and how new buildings have exemplified the Design Guidelines by blending old
5 and new harmoniously. There is not one monolithic building in the neighborhood and the larger
6 buildings in the neighborhood don't overwhelm other buildings. The Design guidelines are
7 reflected in the newer buildings and these projects very clearly maintain the iconic flavor of Capitol
8 Hill and the 15th Avenue East Corridor. While the Kaiser buildings are large they do not overwhelm
9 the neighborhood or their neighbors. The Project shows very little consideration for Safeway's
10 longtime neighbors. The Appellant's appeal stipulates that Appellant has real property rights as a
11 fee simple property owner and has rights and protections under SMC and the Design Guidelines
12 as the adjoining property owner. Appellant stipulates that the Design Guidelines must be applied
13 equitably to ensure old and new buildings blend and complement each other. The Design
14 Guidelines for protecting the tree canopies, scaling of bulk and massing and the blending of old
15 with new are not being followed. The design of the Project bypasses and ignores very important
16 ordinances that affect lots within the Project. Appellant has not overlooked the fact that vacated
17 portion of the Project lots are Public Right of Ways and stipulations to protect the privacy of
18 neighboring buildings which is why the tree canopies were planted on along the property lines of
19 adjoining properties. Public Right of Ways are for the Public. The tree canopy cannot be removed.
20 The vacated portions and ordinances are clearly identified on design plans and the requirements
21 in these ordinances are not being followed in the design of the Project. The tree canopies along
22 Appellant's property are required to be there by Ordinance 120754 and cannot be removed.

23
24 Appellant's witness Rev. Cathryn Reid's declarations stand as written as she was not cross-
25 examined on her declarations or on her testimony. Rev. Reid's declarations show the variety of
26 attempts made to coerce Appellant into selling its property. Attempts were made to coerce
27 Appellant into signing agreements with "unknown" parties are described in Rev. Reid's
28 Declaration (Exhibit 13). To the extent that the Hearing Examiner allowed Appellant to argue for
29 its property rights regarding the Project Appellant has made its argument and proved its point that
30 property rights such as the tree canopy must be enforced. Exhibit 16 offered by the Department
31 and admitted into the record supports Appellant's appeal regarding Appellant's property rights.
32 Page 73 of page 75 of Exhibit 16 clearly identifies in several places on the document that prior to
33 construction a letter from the adjacent property owner (Appellant) must be provided to SDCI
34 showing an agreement/written permission of the temporary encroachment during construction.

35
36
37
38 DATED this 20th day of February, 2024

39 Respectfully submitted by

40 Rev. Jannifer A. Werner *s/ jannifer a. werner*
41 Authorized Representative for Appellant

42
43 Aquarian Foundation, Inc.
44 315 15th Avenue East
45 Seattle WA 98112
46 Tel 206-324-6046
47 Fax: 206-328-2365
48 Email: info@aquarianfoundation.com
49 Appellant.

APPELLANT'S CLOSING ARGUMENTS

1 **CERTIFICATE OF SERVICE**

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

6
7 David Sachs SDCI
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24
25 I declare under the penalty of perjury under the laws of the State of Washington that the foregoing
26 is true and correct and that this declaration was executed on the 20th day of February, 2024 at
27 Seattle, Washington.

28
29 Rev. Cathryn M. Reid
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