

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In re:

APPROVAL OF APPLICATION NO.
3021625 FOR PROJECT LOCATED AT 1706
ALKI AVE S.W.

No. MUP-16-024

**APPLICANT’S RESPONSE TO
RESPONDENT’S JOINT MOTION
FOR PARTIAL DISMISSAL**

I. INTRODUCTION

For the reasons provided herein, the Appellant Scott Francis requests that the Hearing Examiner deny the City of Seattle’s (“City”) and Applicant 1706-1708 Alki Ave SW’s (“Developer”) joint motion for partial dismissal.

V. ARGUMENT

A. The Hearing Examiner has jurisdiction to consider issues relating to setback reductions granted through Administrative Design Review.

The Hearing Examiner has jurisdiction to consider issues relating to the setbacks granted through the City’s Administrative Design Review process. According to City guidance on streamlined design review, “[i]f any development standard departures are proposed, or if another permit component requiring a MUP is present (step 4B) the department’s ADR decision will be issued as part of the decision on the MUP. This is a Type II land use decision.” City of Seattle, Tip 238B Streamlined Design Review (Aug. 12, 2011).

In this matter, the project proponent proposed a variance from ECA buffer requirements. Any variance granted under that subsection SMC 25.09.180.E.2 requires the City to reduce yards and setbacks in order to minimize the impact on the steep slope. The City’s Decision affirming

1 25.09 SMC, the Director does not render a determination as to the meaning, application or intent
2 of Chapter 25.09. Here, owing to the permit applicant's failure to notify the City of the presence
3 of herons, the Director (and public) were deprived of an opportunity to seek the Director's
4 interpretation.

5 The Hearing Examiner has authority to consider whether the permit is consistent with
6 chapter 25.09 SMC. The Examiner has jurisdiction to consider whether the Decision reflects
7 consideration of "conditions on the location and other features of the proposed development as
8 necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the . . .
9 steep slope . . . buffer." SMC 25.09.180.E.4; SMC 25.08.280.B., C. Similarly, the Examiner has
10 jurisdiction to evaluate whether the Decision was based on informed consideration of the impacts
11 of altering trees and habitat subject to this chapter 25.09. SMC 25.09.017.B.

12 **C. The Hearing Examiner does not have jurisdiction over SEPA issues.**

13 The Appellant's Notice of Appeal informed the Examiner of issues arising under SEPA
14 and relating to this matter. However, the Notice of Appeal does not ask the Hearing Examiner to
15 consider SEPA issues.

16 **VI. CONCLUSION**

17 For the reasons provided above, the Appellant requests the Examiner deny the joint
18 motion for partial dismissal.

19 DATED this 13th day of February, 2017.

20 TUPPER MACK WELLS, PLLC

21
22 By: /s/ Bradford Doll
23 Bradford Doll, WSBA No. 38479
24 Attorneys for Appellant
25
26