

1 SEATTLE HEARING EXAMINER

2  
3 In the Matter of the Appeal by  
4 LIVABLE PHINNEY,  
a Washington non-profit corporation  
5 from a determination of non-significance,  
6 design review and interpretation

Hearing Examiner File  
MUP-17-009 (DR, W)

APPELLANT'S RESPONSE TO  
APPLICANT'S MOTION TO DISMISS OR  
FOR SUMMARY JUDGMENT

7  
8 **I. INTRODUCTION**

9 Applicant's motion is a misguided attempt to prevent the Hearing Examiner from  
10 reviewing the facts that determine which law applies to a Master Use Permit Decision  
11 appealed to the Examiner. The Applicant has invented a term it calls "Project Vesting  
12 Date," (Motion at 1), and then argues, that (1) the Hearing Examiner lacks jurisdiction to  
13 determine such a date or (2) in the alternative, should grant summary judgment and  
14 declare as the Project Vesting Date, the Applicant's desired date of September 3, 2015.  
15 But context matters. And the specific words of the applicable Land Use Code sections  
16 matter. A so-called "Project Vesting Date" cannot be determined in isolation.  
17 Appellant's Response provides the necessary context.

18  
19 In this case, the Applicant began its design review process around the same time  
20 the City Council was approving the Land Use Omnibus Legislation that changed two  
21 provisions of the Land Use Code that applied to this project: (1) the language in SMC  
22 23.47A.014.B.3 relating to upper level setbacks in certain commercial zones; and (2)  
23 one sentence of SMC 23.76.026.C.2 that specifies which version of the Land Use Code  
24 applies to a Master Use Permit Application that includes a design review component.  
25

1 The Applicant prefers the version of the setback provisions that were in effect when it  
2 submitted its EDG application, but it also prefers the version of SMC 23.76.026.C.2  
3 (“vesting”) that took effect after it submitted its EDG application. The Motion, revolving  
4 around a self-titled “Project Vesting Date,” is an attempt to force a decision on a  
5 material issue that infected the Design Review process before the Examiner hears  
6 relevant evidence. The motion should be denied in its entirety.

7  
8 In the end, however, Applicant’s motion is likely much ado about nothing.  
9 Appellant Livable Phinney will demonstrate at the hearing that both the Decision and  
10 the Interpretation misapplied the clear and unambiguous language of the “old” setback  
11 law that the Applicant desires. When that Code language is applied properly, this  
12 project will require fifteen foot upper level setbacks that the Applicant has tried to avoid.

## 13 II. FACTUAL BACKGROUND

14 This case involves an exceptionally controversial micro-unit project proposed for  
15 a small commercial parcel in the Phinney Ridge neighborhood. The proposed project  
16 includes 57 units with no on-site parking, in an area where the street parking is already  
17 overcapacity. The project site is located on a lot zoned NC2-40 in the Greenwood-  
18 Phinney Urban Village. It abuts two single family homes that share the rear boundary  
19 line (i.e., the property line opposite Greenwood Avenue). The approved 48-foot high  
20 mixed-use building includes a five-foot setback at ground level, and only a ten-foot  
21 upper level setback from the single family homes at its easterly property line.  
22

23  
24 The Land Use Code provision that required fifteen foot upper level setbacks on  
25 certain commercial parcels changed shortly after Applicant submitted its application for

1 Early Design Guidance. Numerous other Land Use Code provisions were also changed  
2 at that same time in the 2015 Omnibus Legislation (Ordinance 124843).

3 Applicant's Motion regarding a "Project Vesting Date" – again, the applicant's  
4 term, not one used by the Land Use Code – appears to be an attempt to secure that  
5 original version of the upper level setback language for its project, because SDCI  
6 believes that that version of the Code does not require upper level setbacks for  
7 Applicant's project.<sup>1</sup> An amended version of that Code provision that took effect shortly  
8 after the Applicant submitted its application for Early Design Guidance, stated  
9 unequivocally that fifteen foot upper level setbacks would be required in these  
10 situations.  
11

12 **A. Timeline of Project Application and Applicable Code Changes.**

13 On August 5, 2015, the Applicant had its Pre-Submittal Conference with SDCI  
14 staff. See Attachment 1 to this Response. Around that same time the City Council  
15 passed the 2015 Land Use Omnibus Legislation (Ordinance No. 124843) that changed  
16 the language of the upper level setback requirements of SMC 23.47A.014.B.3, and also  
17 changed one sentence in SMC 23.76.026.C.2 that determines which law applies to a  
18 project that is undergoing design review if that project requires more than one EDG  
19 meeting.  
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23 <sup>1</sup> Appellant's Request for Interpretation argues that SDCI had misapplied the clear and  
24 unambiguous language in the old setback provision, and that that language, when properly  
25 applied, requires fifteen foot upper level setbacks on this project. See Request for Interpretation  
at 1-4. SDCI repeated – and magnified – its erroneous reading of the clear and unambiguous  
words in this Code provision in its Interpretation issued on March 30, 2017. See SDCI  
Interpretation No. 17-002 at 3-5. That Interpretation is on appeal to the Examiner and  
consolidated with other components of the MUP in Appellant's appeal.

1 According to the Applicant's Pre-submittal minutes from the August 5<sup>th</sup> meeting,  
2 "[t]he design team wanted to confirm that due to [the split-zone condition of the abutting  
3 rear lots] no setbacks were required. . . ." and that SDCI "confirmed that per code the  
4 setback is determined by the condition at the property line, so no setback would be  
5 required." apparently due to the rear parcels being split-zoned lots. *Id.* at Page 1  
6 (emphasis added).<sup>2</sup> At least SDCI's document page for the pending application shows  
7 these meeting minutes to be "approved."<sup>3</sup>

8  
9 The Pre-submittal Notes also indicate that "[t]he applicant asked if there are any  
10 code changes currently being discussed that may have an impact on the project." *Id.* at  
11 Page 2. Curiously, the notes (written by the Applicant) do not mention the forthcoming  
12 upper level setback change, even though the new code language expressly required  
13 fifteen-foot upper level setbacks on commercial parcels that abutted split-zoned lots,  
14 such as the parcel in this case, and would materially affect the designs presented at the  
15 Early Design Guidance meeting.

16  
17 On August 21, 2015, the Mayor signed the Omnibus legislation but, according to  
18 City law, there is a 30-day period after legislation is signed before it takes effect.

19 On September 3, 2015, Applicant submitted its Early Design Guidance  
20 Application.

21  
22 <sup>2</sup> Appellant's Request for Interpretation argues that SDCI had misapplied that "old" Code  
23 provision, and that the clear language of SMC 23.47A.014.B.3 at that time required upper level  
24 setbacks on split-zoned lots. See Interpretation at 1-4. The SDCI Interpretation issued on  
25 March 30, 2017, also ignored the unambiguous Code language. As noted, SDCI's  
interpretation of its "old" code is included within this appeal.

<sup>3</sup>See <http://www.seattle.gov/dpd/toolsresources/Map/detail/default.htm?lat=47.67852334&lon=-122.35508197&addr=6726,,GREENWOOD,AVE,N>

1 On September 21, 2015, the Omnibus legislation, including the “new” setback  
2 language and “new” vesting language, took effect.

3 On October 19, 2015, Applicant had its first EDG meeting. The Design Review  
4 Board unanimously rejected Applicant’s materials and required a second EDG meeting.

5 **B. Code Provisions Changed by Omnibus Legislation**

6 **1. Upper level setback provision**

7 When Applicant submitted its EDG Application on September 3, 2015, the upper  
8 level setback provision required, for a structure containing a residential use, a fifteen  
9 foot setback for portions of structures above 13 feet in height “along any side or rear lot  
10 line that abuts a lot in a residential zone . . .” SMC 23.47A.014.B.3 (emphasis added).  
11

12 SDCI believed (erroneously) that this language did not apply when a commercial  
13 lot abutted a split-zoned lot (a lot in a single family zone where a small portion in the  
14 rear of the lot was zoned commercial), and therefore it allowed projects proposed for  
15 commercial parcels that abutted a split-zoned lot containing single family homes to  
16 proceed with no setbacks whatsoever. This situation occurs in a number of parcels in  
17 the Greenwood/Phinney area where zoning was drawn in a generally straight line that  
18 did not accommodate the actual boundaries of smaller commercial parcels. See  
19 Attachment 2, vicinity zoning maps.<sup>4</sup>  
20

21 Appellants requested an Interpretation of the “old” code language because the  
22 defined terms in that provision indicated a fifteen-foot upper level setback was required  
23 regardless of whether the abutting lot was split-zoned or exclusively single family. See  
24

25 \_\_\_\_\_  
<sup>4</sup> See maps 39 and 40 for zoning along Greenwood Avenue North, available at:  
<http://www.seattle.gov/dpd/toolsresources/zoningmapbooks/>

1 Request for Interpretation at 1-4. Unsurprisingly, SDCI's Interpretation issued on March  
2 30, 2017 affirmed its earlier position on this issue.

3 The amended version of SMC 23.47A.014.B.3 contained in the Omnibus  
4 legislation that took effect on September 21, 2015, required a fifteen foot upper level  
5 setback along "a rear lot line that abuts a lot in a residential zone . . . , or that abuts a lot  
6 that is zoned both commercial and residential if the commercial zoned portion of the  
7 abutting lot is less than 50 percent of the width or depth of the lot . . ." (Emphasis  
8 supplied.) In other words, there would be no need to look up defined terms in the  
9 amended version because it now specifies directly that the upper level setbacks apply  
10 to commercial parcels abutting split-zoned lots. All parties agree that the new setback  
11 language would require fifteen foot upper level setbacks for this project.  
12

## 13 **2. The "vesting" provision, or "which law applies" to this project.**

14 When the Applicant submitted its EDG Application on September 3, 2015, the  
15 Land Use Code, at SMC 23.76.026.C.2 stated that a MUP application with a design  
16 review component "shall be considered under the Land Use Code and other land use  
17 control ordinances in effect on the date a complete [EDG application] is submitted" to  
18 SDCI, provided the MUP application is filed within a specified time, but that if more than  
19 one EDG meeting was required, the complete MUP application "shall be considered  
20 under the Land Use Code and other land use control ordinances at the time of the first  
21 meeting[.]" again provided the MUP is filed in the specified time. (Emphasis added.)  
22

23 The amended version of SMC 23.76.026.C.2 contained in the Omnibus  
24 legislation that took effect on September 21, 2015, changed the date for the Code  
25 provisions that apply to a project that requires more than one EDG meeting. Instead of

1 using the Land Use Code provisions in effect on the date of the EDG meeting as  
2 occurred in the prior version, the amended version stated that, if more than one EDG  
3 meeting was required, the complete MUP application “shall be considered under the  
4 Land Use Code and other land use control ordinances in effect on the date a complete  
5 application for early design guidance process is submitted to the Director, [provided the  
6 MUP is filed in the specified time].” In other words, it turns the clock back to the law in  
7 effect at the time a complete EDG application was submitted.<sup>5</sup>  
8

9 SDCI determined that the “new” version of SMC 23.76.026.C.2, that took effect  
10 on September 21, 2015, should be applied retroactively to Applicant’s EDG application  
11 that had been submitted on September 3, 2015. See Attachment 3, Roberta Baker  
12 email of November 5, 2015, regarding setback provision applicable to 6726 Greenwood  
13 Avenue North project.

14 As a result of that decision, which SDCI conveyed to the Applicant and the  
15 Design Review Board, *Id.*, the Applicant was allowed to proceed to its second EDG  
16 meeting based on the “old” setback language (the law in effect when it submitted its  
17 EDG application), which, according to SDCI, did not require any upper level setbacks.

18 If SDCI had not applied SMC 23.76.026.C.2 retroactively, but instead had  
19 applied the version in effect on the date the applicant attended its first EDG meeting,  
20 then the Applicant would have been required to present design options with fifteen foot  
21  
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23

24 \_\_\_\_\_  
25 <sup>5</sup> Applicant misrepresents this new code language in its motion, claiming that this section as amended vested to the development standards in the Code “on the date that an EDG application is submitted to SDCI. . . .” (Motion at 2, emphasis added). The Code requires a “complete” EDG application.

1 upper level setbacks at its second EDG meeting because the new setback language  
2 was in effect on the date of the second EDG meeting.

### 3 III. ARGUMENT

4 The Hearing Examiner has jurisdiction to determine which version of a  
5 substantive provision of the Land Use Code applies to a Master Use Permit Decision  
6 with a design review component that has been appealed to the Examiner and the  
7 Motion to Dismiss should be denied.

8 The Examiner should also deny the Applicant's summary judgment motion  
9 because there is a genuine issue of material fact as to whether the Applicant submitted  
10 a "complete" EDG application on Applicant's desired "Project Vesting Date" of  
11 September 3, 2015.

12 If the Hearing Examiner agrees that he has jurisdiction over this issue, he must  
13 apply all of the Land Use Code and other land use control ordinances in effect on  
14 whatever date the Examiner determines is the appropriate date.

#### 15 **A. The Hearing Examiner has jurisdiction to determine which substantive** 16 **provisions of the Land Use Code apply to a Type II Master Use Permit** 17 **Decision that has been appealed to the Hearing Examiner.**

18 The Applicant makes the remarkable argument that the Hearing Examiner lacks  
19 jurisdiction to determine which law should be applied to a Decision that has been  
20 appealed to the Examiner. That proposition is disguised in Applicant's invented term,  
21 "Project Vesting Date," Motion at 1. The Applicant then insists that a "Project Vesting  
22 Date" is unreviewable because: (1) it must be a Type I decision for which administrative  
23 review is allowed only by Interpretation (Motion at 4); (2) but it cannot be reviewed  
24 because this Type I decision is not subject to interpretation (Motion at 5); and (3) it  
25



1 cannot be reviewed by the Examiner because it is not one of the Type II “decisions  
2 identified in Section 23.76.006.C.1 and C.2.a-n.” Motion at 6. The Applicant views the  
3 appeal process as a shell game, but with no pea.

4 The Applicant’s argument fails not only for its preposterous result, but because it  
5 misreads the applicable Code sections and overlooks entirely the provision of the Land  
6 Use Code that specifically authorizes the Hearing Examiner to determine which law  
7 applies in the context of this appeal.

8  
9 **1. The issue of which law applies to this project falls within the  
Hearing Examiner’s Scope of Review.**

10 SMC 23.76.022 governs administrative reviews and appeals for Type I and Type  
11 II Master Use Permits. “All Type II decisions listed in subsection 23.76.006.C are  
12 subject to an administrative open record appeal as described in this Section 23.76.022.”  
13 SMC 23.76.022.A.2. Pursuant to SMC 23.76.006.C, “design review decisions” are Type  
14 II decisions that are subject to appeal to the Hearing Examiner. SMC 23.76.002.C.2.e.

15  
16 In this case, the Decision involved a project subject to design review. The design  
17 review component was appealed to the Examiner, along with various SEPA  
18 components of the Decision.

19  
20 SMC 23.76.022.C, in turn, specifies the Hearing Examiner’s scope of review in  
21 land use appeals. Specifically, the Hearing Examiner “shall entertain issues cited in the  
22 appeal that relate to compliance with the procedures for Type II decisions as required in  
23 this Chapter 23.76, compliance with substantive criteria, determinations of  
24 nonsignificance . . . or failure to properly approve, condition, or deny a permit based on

1 disclosed adverse environmental impacts, and any requests for an interpretation  
2 included in the appeal . . ." SMC 23.76.022.C.6 (Emphasis supplied).

3 The issue of which version of SMC 23.026.C.2 should be applied to this project  
4 had a material impact on the design review component of this project, and is within the  
5 Hearing Examiner's scope of review of this appeal.

6 **2. Contemporaneous documents from SDCI confirm that SDCI's**  
7 **retroactive application of the "vesting" provision materially altered**  
8 **the design review process.**

9 In August 2015, at a pre-submittal meeting, SDCI staff informed the Applicant  
10 that the setback language in effect at that time did not require any upper level setback.<sup>6</sup>  
11 See Attachment 1, Approved Pre-Submittal Minutes. As a result, none of the designs  
12 presented at the first Design Review Board meeting included a fifteen foot upper level  
13 setback.<sup>7</sup> The assigned planner, Michael Dorcy, specifically notified the Design Review  
14 Board in advance of the first EDG meeting when he transmitted Applicant's material,  
15 that "[t]here are a couple of issues which may bring out the local folks, . . . [including]  
16 the fact that the project is potentially vested prior to a change in the land use code now  
17 in effect that would require that the east property line abutting a strip of neighborhood  
18 commercial zoning on the split zone (commercial and single family properties to the  
19 east) be treated as if abutting a residential zone for setbacks."(Errant parenthesis  
20  
21

22 <sup>6</sup> As noted in Footnote 1, Appellants argue in their Request for Interpretation (and now in their  
23 appeal of the SDCI Interpretation on this issue), that SDCI had misapplied the unambiguous  
24 "old" code language, and that upper level setbacks were required under that old version of SMC  
23.47A.014.B.3.

25 <sup>7</sup> The initial and subsequent project designs are posted on SDCI's document page at  
[http://www.seattle.gov/dpd/toolsresources/Map/detail/default.htm?lat=47.67852334&lon=-  
122.35508197&addr=6726,,GREENWOOD,AVE,N.](http://www.seattle.gov/dpd/toolsresources/Map/detail/default.htm?lat=47.67852334&lon=-122.35508197&addr=6726,,GREENWOOD,AVE,N.)

1 deleted). See Attachment 4, email Michael Dorcy to DRB of October 6, 2015 (taken  
2 from page 4 of Release 1, part 2 to Appellant's first public records request). At this  
3 meeting the Design Review Board unanimously rejected the Applicant's proposals and  
4 required a second EDG meeting.

5 After the first EDG meeting, members of the Phinney Ridge community  
6 contacted SDCI regarding the application of the "vesting" provisions of SMC  
7 23.76.026.C.2. The version of SMC 23.76.026.C.2 in effect on the Application date  
8 ("old vesting law") stated that, "[i]f more than one early design guidance public meeting  
9 is held, then a complete application for a Master Use Permit that includes a design  
10 review component shall be considered under the Land Use Code and other land use  
11 control ordinances in effect at the time of the first meeting." (Emphasis added.) If that  
12 version of the law applied to this project, then the project would be required to proceed  
13 under the "new" upper level setback law that specifically required 15-foot upper level  
14 setbacks on commercial lots that abut split-zoned lots.

15 SDCI, however, decided to apply the "new" vesting law retroactively to this  
16 project. See Attachment 3, Baker email of November 15, 2015. That new version, in  
17 contrast, looked back to the law in effect at the date a complete application was  
18 submitted when more than one EDG meeting was held. SDCI then determined that the  
19 "old" setback law applied. Or to use Applicant's naming convention, it determined the  
20 so-called "Project Vesting Date" was September 3, 2015 when the EDG application was  
21 submitted. Because SDCI had previously informed the applicant that no setbacks were  
22 required under this provision (Attachment 1, Presubmittal Meeting Notes), it allowed this  
23 project to proceed to a second EDG meeting without any upper level setbacks. Indeed,  
24  
25

1 SDCI specifically communicated this information to the Applicant and to the Design  
2 Review Board. See Baker email of November 15, 2015 (“This same information will be  
3 conveyed to the project applicant and to the Design Review Board so that all parties  
4 can proceed with the rest of the early design guidance process. . . .”) (Emphasis  
5 supplied.) Thus, the Design Review Board was specifically informed that the Applicant  
6 was not required to include fifteen foot upper level setbacks in the design options it  
7 would be presenting at a second EDG meeting.

8  
9 The Board, having already been informed that the project would be reviewed  
10 under a version of the code that SDCI believed did NOT require fifteen foot upper level  
11 setbacks, allowed the Applicant to transition out of the Early Design Guidance phase  
12 with a design option that included ten-foot upper level setbacks, not the fifteen foot  
13 setbacks that would have been required if SDCI had not selectively applied the “vesting”  
14 provision retroactively. Therefore, SDCI’s decision to apply the “new” version of SMC  
15 retroactively to this project, had a material and detrimental impact on the design review  
16 component of the Type II decision on appeal to the Examiner.

17  
18 Accordingly, whether SDCI applied the correct version of SMC 23.76.026.C.2 to  
19 this project (or whether it properly determined the “Project Vesting Date”) is within the  
20 Hearing Examiner’s scope of review under SMC 23.76.022.C.6. The Hearing Examiner  
21 has jurisdiction to decide this issue. The applicant’s attempt to insist that this is  
22 somehow an unreviewable Type I decision, or a type of land use decision that is not  
23 specifically listed in the Type II decisions appealable to the Examiner, misses the mark  
24 entirely. The Motion to Dismiss should be denied.  
25

1           **B. The Examiner should deny Applicant’s request for summary judgment**  
2           **on a determination of a “Project Vesting Date” because there is a genuine**  
3           **issue of material fact whether the Applicant’s EDG Application of**  
4           **September 3, 2015 was “complete” on that date or any date before the**  
5           **effective date of the Omnibus Legislation.**

6           The Applicant erroneously states that “[t]he undisputed facts indicate that the  
7           Project vested to the Code’s development standards on September 3, 2015, the date  
8           the Applicant submitted its EDG application.” Motion at 7. That statement rests on a  
9           faulty premise. A MUP application with a design review component does not vest to  
10          Code provisions in effect on the date the applicant “submitted its EDG application.” It  
11          vests to the Land Use Code provisions in effect on the date it submits a complete  
12          application for the early design guidance process. SMC 23.76.026.C.2. (“If more than  
13          one early design guidance public meeting is held, then a complete application for a  
14          Master Use Permit that includes a design review component shall be considered under  
15          the Land Use Code and other land use control ordinances in effect on the date a  
16          complete application for the early design guidance process is submitted to the  
17          Director, “)(Emphasis added). Thus, the date a complete EDG application was  
18          submitted is paramount.

19          In its motion, the Applicant never mentions the need for a “complete” application.  
20          Instead, every time the Applicant mentions this code provision, it omits the requirement  
21          for a “complete” application. See e.g., Motion at 2 (under the amended SMC  
22          23.76.026.C.2, “a project is considered by the City to vest to the development standards  
23          in the Code on the date that an EDG application is submitted to the City . . . .”); Motion  
24          at 7 (“the date the Applicant submitted its EDG application”); and Motion at 7 (“Applicant  
25          submitted an EDG application on September 3, 2015”). (Emphasis added.)

1 Appellant is not aware of any evidence that SDCI affirmatively determined that  
2 the EDG application submitted on September 3, 2015 was a complete EDG Application,  
3 or that SDCI did anything other than look at the date the EDG application was  
4 submitted. Even senior SDCI staff evidently did not know how the department  
5 determines when an EDG application was “complete.” See Attachment 5, email from  
6 Roberta Bakier to William Mills dated September 23, 2015 (produced in SDCI’s second  
7 installment in response to Appellant’s first request for records).  
8

### 9 **1. Requirements for a Complete EDG Application.**

10 The Land Use Code does not define a “complete EDG application.” But SDCI  
11 had an applicable Client Assistance Memo (“CAM”) on that topic: CAM 238, titled  
12 Design Review: General Information, Application Instructions, and Submittal  
13 Requirements,<sup>8</sup> a copy of which is set forth at Attachment 6. CAM 238 “is intended to  
14 . . . offer detailed instructions about the application and submittal requirements and  
15 review process.” *Id.* at Page 1. It offers detailed instructions on “[h]ow to complete an  
16 EDG Analytic Design Proposal Packet.” For example, the packet “should include,”  
17 among other items “Three feasible alternative architectural concepts. For each concept  
18 list pros and cons. . . . Show siting, massing, open space, façade treatments, and  
19 access . . . .” Page 7 (emphasis added).  
20

21 CAM 238 also includes, as “Attachment A,” the “Application for Early Design  
22 Guidance.” Part III of the application specifies the components of the “EDG Analytic  
23 Design Proposal Packets” and lists the specific items for the applicant to provide  
24 “[t]ogether with a written response to the questions above.” This, too requires the  
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<sup>8</sup> CAM 238 was replaced by TIP 238, effective February 2016.

1 applicant to “list pros and cons” for each architectural concept presented, and to show  
2 “siting, massing, open space, façade treatments, and access in the same graphic  
3 context . . .” Page 13, at #5. It also requires an indication of topography in the site  
4 analysis.

5 **2. Applicant’s EDG material submitted on September 3, 2015 was**  
6 **not a complete EDG Application.**

7 The version of Applicant’s Early Design Guidance Design Proposal material  
8 dated September 3, 2016 is marked “DRAFT.”<sup>9</sup> There is no topography provided, as  
9 required in the application. A street view of Greenwood Avenue is mislabeled “Corner of  
10 E Pike St & Harvard Ave” (Page 9). The four “Conceptual Design Options” are virtually  
11 indistinguishable from one another. They are hulking, windowless, featureless masses  
12 that cannot be meaningfully distinguished from the surrounding buildings. Page 15-24.  
13 There are no façade treatments shown or described. Nor does the material include any  
14 mention of the pros and cons of each design as required. The SDCI website does not  
15 include any additional EDG proposal material submitted before September 21, 2015,  
16 the effective date of the Omnibus legislation.  
17

18 The SDCI summary of the first EDG meeting noted in its list of major points that  
19 the Board “[r]equested a clarification of what real discrete choices were contained in the  
20 so-called options.” Notes of First EDG meeting on October 19, 2015 at 4, which is  
21 posted on SDCI’s document page with a posting date of November 3, 2015.  
22

23  
24 <sup>9</sup> On SDCI’s document page this application is titled “Initial EDG Proposal” and shows a posting  
25 date of September 4, 2015. The cover page is set forth at Attachment 7. Another version of  
Applicant’s EDG packet is posted on the SDCI website with a posting date of October 6, 2015,  
but it has document date of October 19, 2015, the date of the EDG meeting. That version is not  
marked “DRAFT.”

1 At the end of that first EDG meeting, the Board voted unanimously to require  
2 another EDG meeting. It specifically required a site survey with elevational notations,  
3 building materials, etc., elements that are required for a complete EDG Application but  
4 that Applicant had failed to provide.

5 There is, therefore, a genuine issue of material fact whether the Applicant's EDG  
6 material submitted on September 3, 2015 was "complete" for purposes of triggering  
7 vesting on the date of that application under SMC 23.76.026.C.2. The Applicant's  
8 request for summary judgment on the date of project vesting should be denied.  
9

10 If the September 3, 2015 application was not complete on that date, and there is  
11 no other evidence to suggest it was "complete" before September 21, 2015 when the  
12 Omnibus legislation took effect, then the Applicant would be bound by all provisions of  
13 the Land Use Code in effect on September 21, 2015, including the fifteen foot upper  
14 level setbacks required in the Code provision in effect on that date.  
15

16 **C. If the Examiner agrees with Applicant that the "Project Vesting Date"**  
17 **should be September 3, 2015, or determines any other "Project Vesting**  
18 **Date," the Examiner should also conclude that the Applicant is bound by**  
**all Land Use Code provisions and land use control ordinances in effect on**  
**that date, including SMC 23.76.026.C.2.**

19 "It is well settled that a land use application, under the proper conditions, will be  
20 considered only under the land use statutes and ordinances in effect at the time of the  
21 application's submission." *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432,  
22 438-39 (Wn. App. 2005). SDCI, however, selectively applied the version of SMC  
23 23.76.026.C.2 that took effect on September 21, 2015, retroactively to the Applicant's  
24 EDG application submitted on September 3, 2015, before that law took effect. That  
25 decision had a material impact on the version of the upper level setback law that was



1 applied in this case, an error compounded by SDCI's persistent misreading of the old  
2 setback language.

3 **1. Selective waiver of existing laws at the time of application is**  
4 **prohibited.**

5 In *East County Reclamation*, the court specifically rejected a Hearing Examiner's  
6 decision that allowed the applicant to selectively apply only some of the statutes and  
7 ordinances in effect at the time of its application. See e.g., *East County Reclamation*,  
8 125 Wn. App. at 437 (“[W]e hold that the hearing examiner erred by accepting  
9 [applicant’s] selective waivers and by failing to review [the] application under the  
10 regulations and law in effect at the time it chose to file its initial application.”).

11 The applicant in *East County Reclamation* had filed an application to construct a  
12 private landfill. The applicant preferred a version of some of the applicable laws in  
13 effect on its application date, but for other laws, it preferred a later-enacted version.  
14 The hearing examiner allowed the applicant to waive its vested rights for those laws  
15 where the applicant preferred a later-enacted version, but maintain its vested rights for  
16 the laws it liked. *Id.* at 438.

17 The court, however, rejected applicant’s “cherry picking” of the regulations it  
18 desired: “[The Applicant’s] selective waiver allowed it to comply with favorable [later-  
19 enacted] regulations while enforcing the [ ] regulations in effect on the application date  
20 when they worked to [applicant’s] advantage.” *Id.* at 439. Accordingly, the court held  
21 that the “application must be reviewed under the laws existing at the time the  
22 application was filed.” *Id.* at 440.  
23  
24  
25

1 In this case, it was SDCI, not the applicant, that selectively waived one particular  
2 provision of the Land Use Code in favor of a later-enacted version of that provision, a  
3 decision that materially altered the direction of this project. But that decision runs afoul  
4 of *East County Reclamation's* prohibition on selective waiver of laws in effect on the  
5 application date.

6 **2. The version of SMC 23.76.026.C.2 in effect on the application date**  
7 **is the version that applies to a project.**

8 SMC 23.76.026.C.2 envisions three distinct scenarios that could unfold in the  
9 design review process, and for each scenario, it specifies that the project "shall be  
10 considered under the Land Use Code and other land use control ordinances in effect"  
11 on a specified date, provided the applicant submits a complete application for a MUP  
12 within a specified number of days. These provisions operate as contingent vesting  
13 provisions, informing the applicant of the law that will be applied if certain conditions are  
14 met.

15  
16 If the applicant prefers a later version of this section, then it could withdraw its  
17 application and resubmit it. *East County Reclamation*, 125 Wn. App. at 439-440. But it  
18 cannot benefit from a later enacted version of this provision without accepting all of the  
19 land use code provisions in effect at that date.

20  
21 The contingent vesting provisions of SMC 23.76.026.C.2 are fundamentally  
22 different from the Reasonable Use Exception (RUE) process for defining a maximum  
23 development envelope on otherwise undevelopable land that the court found not to be  
24 subject to the vested rights doctrine in the *Goat Hill* case upon which the Applicant  
25 heavily relies. Motion at 7-8. See *Goat Hill Homeowners Ass'n v. King County*, 686 F.

1 Supp.2d 1130, 1134-35 (W.D. Wash. 2010). *Goat Hill* did not hold, as Applicant claims,  
2 “that a reasonable use exception provision is not a ‘land use ordinance’ . . .” Motion at 7  
3 (Emphasis added). Instead, the court concluded that: (1) the RUE process merely  
4 defined the maximum amount of land that could be disturbed, not the specific  
5 requirements for future construction; (2) these requirements were procedural  
6 requirements, not development regulations because they were not controls placed on  
7 the development of land or land use activities; and (3) therefore, the vested rights  
8 doctrine did not prohibit a change in the RUE process from being applied retroactively.  
9 *Id at 1133-36*. Furthermore, because the RUE was a Type 2 land use decision that  
10 sought an exception to a land use regulation, it fit within the plain language of King  
11 County’s vesting provision that specifically excluded from its vesting statute those Type  
12 2 decisions that seek an exception to land use regulations. *Id. at 1136. Goat Hill,*  
13 accordingly, has no bearing on issues here.  
14

15  
16 If the Hearing Examiner agrees that Applicant’s “vesting date” is September 3,  
17 2015, then Applicant must accept the version of SMC 23.76.026.C.2 that dictated which  
18 law would be applied to applications that “vested” on that date. Applying a new version  
19 of SMC 23.76.026.C.2 retroactively leads to absurd results and interjects  
20 unpredictability into the land use permitting process. For example, if a later-enacted  
21 version of SMC 23.76.026.C.2 had shortened the time afforded an Applicant to submit  
22 its MUP application, would an Applicant who had counted on having the numbers  
23 specified in SMC 23.76.026.C.2 on its application date, suddenly have a shorter window  
24 to submit a complete application, or perhaps be foreclosed altogether from having the  
25

1 substantive law it had counted on? Such a result would be compelled if SMC  
2 23.76.026.C.2 is applied retroactively.

3 **IV. CONCLUSION**

4 For the reasons given above, the Applicant's Motion to Dismiss and/or for  
5 Summary Judgment should be denied.

6 Dated this 6<sup>th</sup> day of April, 2017.

7 ARAMBURU & EUSTIS, LLP

8  
9 By 

10 Jeffrey M. Eustis, WSBA #9262  
11 Attorney for Livable Phinney  
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DECLARATION OF SERVICE

I am a partner in the law offices of Aramburu & Eustis, LLP, over eighteen years of age and competent to be a witness herein. On the date below, I served copies of the foregoing document upon parties of record, addressed as follows:

Patrick Downs,  
Assistant City Attorney  
Patrick.Downs@Seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger


David Graves  
City of Seattle Office of Planning and Community Development  
David.Graves3@seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

Michael Dorcy  
City of Seattle Office of Planning and Community Development  
Michael.Dorcy@seattle.gov  
@seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

Jessica Clawson  
jessica@mhseattle.com  
Katie Kendall  
kkendall@mhseattle.com  
Attorneys for the Applicant  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED: April 6, 2017.

  
\_\_\_\_\_  
Jeffrey M Eustis

# Attachment 1

Meeting Minutes

Date: August 6<sup>th</sup>, 2015 1:00pm

**Re: EDG Pre-submittal Conference | 6726 Greenwood Ave N | # 3020114**

Attendees:

Michael Dorcy, Seattle DPD

Lori Swallow, Seattle DPD

Kelten Johnson, Owner

Jay Janette, Skidmore Janette APD

Ryan Dingle, Skidmore Janette APD

---

Michael,

Thank you for your assistance yesterday. Below is a record of our meeting for your review, confirmation, and approval.

Project Overview:

The proposed project is a 60 unit, 4 story mixed use structure with no parking. The NC2-40 zoned site is located at 6726 Greenwood Ave N at the corner of Greenwood Ave N and N 68<sup>th</sup> St with commercial and multi-family uses located to the North, South, and West (including two mixed use buildings of similar scope and scale). To the East the zoning and use is single family.

Proposed designs currently have commercial space along Greenwood Ave, with a residential lobby and live work units off of 68<sup>th</sup> to create a transition to the residential zoning to the East. The two presented schemes at this meeting provide a level 1 commercial floor (Ownership has a tentative deal with current tenants Stumbling Goat and Kort Haus to return), with the upper stories maintaining a strong corner and façade along Greenwood and 68<sup>th</sup>. The massing shifts occur by stepping back in a tiered fashion along the East property line to form amenity area (Option A), or carving out the central portion of the building to create a South facing courtyard. (Option B)

**Zoning:**

- Split Zoning:  
The zone transition from NC2-40 to SF 5000 occurs beyond the site's East property line, making the properties to the East split NC2-40 & SF 5000. The design team wanted to confirm that due to this condition, no setbacks were required, as well as discuss what might be expected from the board. Lori confirmed that per code the setback is determined by the condition at the property line, so no setback would be required. Michael commented that the East façade and transition would be an important part of the design, and something the board would likely pay close attention to.

- **Parking / Transit Study:**  
The proposal does not provide any parking. The design team has completed transit calculations, and looked at the traffic study for the adjacent project to the North, and doesn't expect any issues. That being said, the design team would like to have the transit calculations / parking impact study looked at as soon as possible. Michael confirmed that the earliest the SEPA portion of the review could occur would be at MUP submittal. Lori stated that a "Request for DPD services" could be requested to review the transit calculations prior to submittal.
- **Upcoming Code Changes:**  
The applicant asked if there are any code changes currently being discussed that may have an impact on the project. (such as exterior walkways counting as FAR) Lori stated that the exterior walkway code revision only affects LR2 zones. There are changes to the Live/Work code section that limit the residential uses (kitchens, bedrooms, etc...) that can be located in the street-facing half of a Live/Work unit at street level.

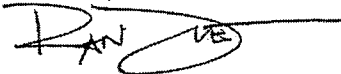
#### **Planning / Land Use:**

Michael and the design team discussed the packet and schemes presented:

- The design team confirmed that now that the split-zoning condition on the East has been verified a third design will be developed that will likely provide additional modulation on the street facing façades.
- Michael noted that there needs to be significant differences between the options being presented – large massing moves or building shape changes.
- The board will likely want to see a shade / light study presented.
- Though not required until later, an appendix A (historical review) of the building has been completed and the owner, Kelten Johnson, will forward it on now that a reviewer has been assigned.

A timeline was discussed and Michael confirmed that he will review the board's schedule and get a meeting date selected as soon as possible.

Thank you,



Ryan Dingle

**Skidmore Janette architecture | planning | design**

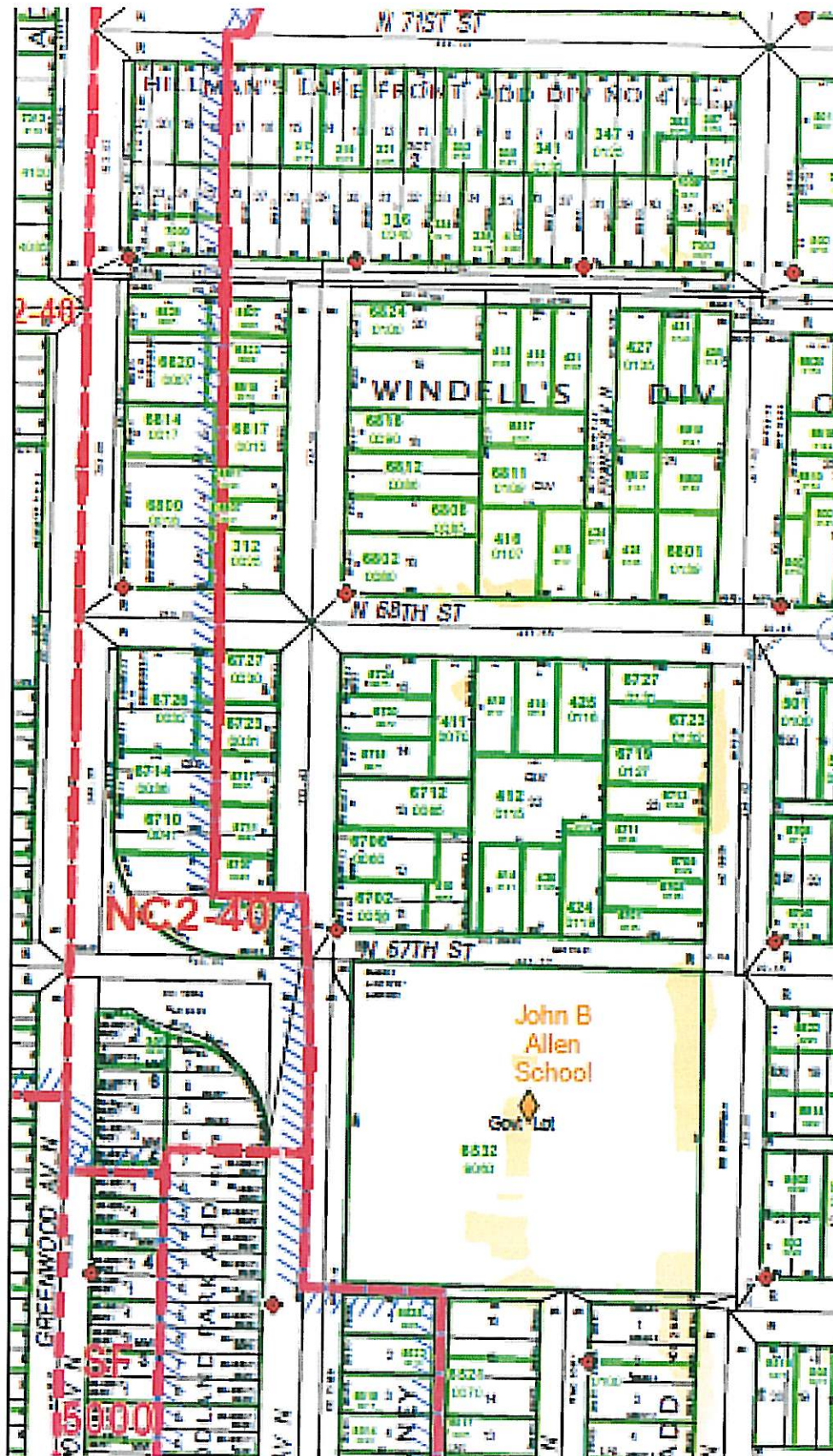
5309 22<sup>nd</sup> Ave NW Suite B

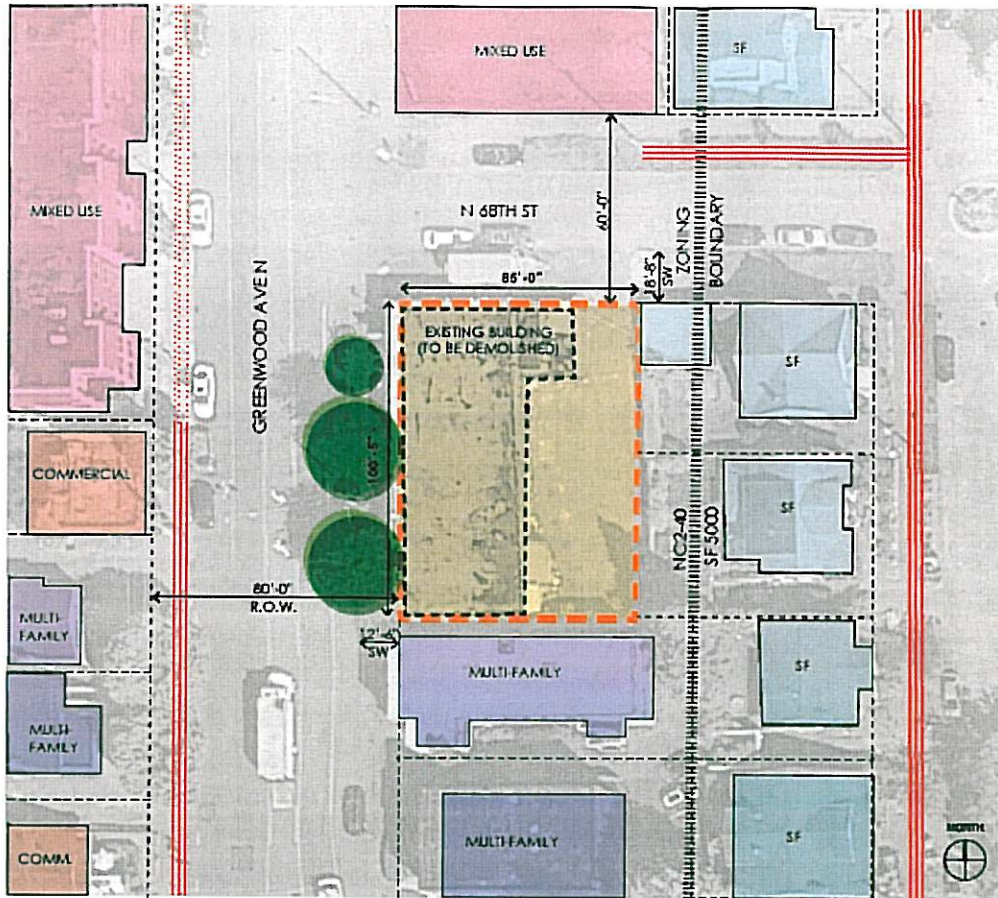
Seattle, WA 98107

206.453.3645



# Attachment 2





# Attachment 3

**From:** "Baker, Roberta" <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>  
**Subject:** FW: Project 3020114 6726 Greenwood Avenue North  
**Date:** November 5, 2015 at 2:52:41 PM PST  
**To:** "[iwall@serv.net](mailto:iwall@serv.net)" <[iwall@serv.net](mailto:iwall@serv.net)>, "[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)" <[ebartfeld@comcast.net](mailto:ebartfeld@comcast.net)>  
**Cc:** "O'Brien, Mike" <[Mike.OBrien@seattle.gov](mailto:Mike.OBrien@seattle.gov)>, "McConaghy, Eric" <[Eric.McConaghy@seattle.gov](mailto:Eric.McConaghy@seattle.gov)>, "Handy, Esther" <[Esther.Handy@seattle.gov](mailto:Esther.Handy@seattle.gov)>, alice poggi <[avpoggi@hotmail.com](mailto:avpoggi@hotmail.com)>, "Podowski, Mike" <[Mike.Podowski@seattle.gov](mailto:Mike.Podowski@seattle.gov)>, "Torgelson, Nathan" <[Nathan.Torgelson@seattle.gov](mailto:Nathan.Torgelson@seattle.gov)>, "Leslie, Dori" <[Dori.Leslie@seattle.gov](mailto:Dori.Leslie@seattle.gov)>, "Swallow, Lori" <[Lori.Swallow@seattle.gov](mailto:Lori.Swallow@seattle.gov)>, "Laird, Bob" <[Bob.Laird@seattle.gov](mailto:Bob.Laird@seattle.gov)>, "McKim, Andy" <[Andy.McKim@seattle.gov](mailto:Andy.McKim@seattle.gov)>, "Rutzick, Lisa" <[Lisa.Rutzick@seattle.gov](mailto:Lisa.Rutzick@seattle.gov)>

Irene and Esther –

I'm responding to your emails from last week, regarding how the vesting provisions in the Land Use Code will apply to a new development proposal on a site which is located at 6726 Greenwood Avenue North (DPD project # 3020114). I apologize for the delay in responding, but we felt we needed to take the time to fully discuss this issue, since it is important to all interested parties, and will inform how the rest of the review in the permit process will proceed.

You have written to raise questions about how vesting standards apply to Project No. 3020114, and whether a new upper-level setback requirement adopted by Ordinance No. 124843 applies to that project.

Ordinance No. 124843, which took effect on September 21, 2015, included two pertinent code amendments: It added a new upper-level setback requirement for certain developments on commercially-zoned lots abutting split-zoned lots, and it modified the vesting standards, under SMC 23.76.026, for projects going through design review, in cases where more than one early design guidance meeting is required.

Ms. Bartfield has argued that the applicant may not pick and choose which sections of the prior code should apply to the project and that if the post-omnibus vesting provision is applied then the project should also be subject to the post-omnibus setback standard.

A project does not lock into a vesting date based on submitting an EDG application until a timely MUP application is submitted. Project 3020114 had not vested at the time Ordinance 123649 took effect because although the EDG application had been submitted, the MUP application had not been submitted. The vesting provision in effect when the EDG application was submitted was superseded by Ordinance No. 124843 before all necessary vesting conditions were met.

Therefore, the vesting provision under Ordinance No. 124843 applies to the project. And under the development standards in effect on September 3, the project is not subject to the upper-level setback requirement provided a MUP application is submitted within 150 days after the first EDG public meeting that occurred on October 19.

I hope this information is helpful in clarifying how the city applies the vesting provisions in 23.76.026, and how it will apply to this project. This same information will be conveyed to the project applicant and to the Design Review Board so that all parties can proceed with the rest of the early design guidance process, and eventually the full Master Use Permit review.

Respectfully,

*Roberta Baker, Land Use Program Director  
Department of Planning & Development  
P.O. Box 34019  
700 - Fifth Avenue, Suite 2000  
Seattle, WA 98124-4019  
(206) 684-8195  
[roberta.baker@seattle.gov](mailto:roberta.baker@seattle.gov)*

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**From:** Baker, Roberta  
**Sent:** Monday, October 26, 2015 4:33 PM  
**To:** [iwall@serv.net](mailto:iwall@serv.net)  
**Cc:** O'Brien, Mike; McConaghy, Eric; Handy, Esther; [avpoggi@hotmail.com](mailto:avpoggi@hotmail.com); Podowski, Mike; Torgelson, Nathan; Dorcy, Michael; Swallow, Lori  
**Subject:** RE: Project 3020114 6726 Greenwood Avenue North

Irene -

I just wanted to let you know that I'm looking into the details of this application further, and seeking legal advice to make sure that we apply the vesting provisions correctly to this application.

I understand that decision we make on the vesting issue is important to all parties involved in or affected by this project, so want to be sure that we have analyzed this correctly. I anticipate having a response to your latest email by Wednesday afternoon or Thursday morning at the latest.

Roberta Baker, Land Use Program Director  
Department of Planning & Development

---

**From:** Irene Wall [[iwall@serv.net](mailto:iwall@serv.net)]  
**Sent:** Thursday, October 22, 2015 10:51 PM  
**To:** Baker, Roberta  
**Cc:** O'Brien, Mike; McConaghy, Eric; Handy, Esther; [avpoggi@hotmail.com](mailto:avpoggi@hotmail.com); Podowski, Mike; Torgelson, Nathan; Dorcy, Michael; Swallow, Lori  
**Subject:** RE: Project 3020114 6726 Greenwood Avenue North

Roberta,

Thanks for replying. I was unable to attend the Oct 19th EDG but understand there was a large turnout. Your response fails to mention that prior to the surprise change to 23.76.026C2, this project would have vested to the code in effect on Oct 19th including the requirement for the upper level setback for this project because a 2nd EDG meeting is required.

It seems that DPD is selectively applying the Omnibus changes to the benefit of the developer and the detriment of the neighbors, also property owners and taxpayers. I hope this is not the case and that the revised code means that the developer must submit a new, complete application for early design guidance and the code now in effect (requiring the setback) will guide the design alternatives requested by the board. It was the intent of the Council in passing the 2015 Omnibus to correct this error of discriminating against homeowners who had no idea that the city designated a portion of their backyards as commercial property! This would be a good opportunity for DPD to balance the interests of the developer, the adjacent property owners and the community.

Regardless, would you please explain who recommended the amendment to 23.76.026C2 that changes the vesting timing and why?

"A complete application for a Master Use Permit that includes a design review component other than an application described in subsection 23.76.026.C.3 shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process or streamlined design review guidance process is submitted to the Director, provided that such Master Use Permit application is filed within 90 days of the date of the early design guidance public meeting if an early design guidance public meeting is required, or within 90 days of the date the Director provided guidance if no early design guidance public meeting is required. If more than one early design guidance public meeting is held, then a complete application for a Master Use Permit that includes a design review component shall be considered under the Land Use Code and other land use control ordinances **in effect at the time of the first meeting**, provided that such Master Use Permit application is filed within 150 days of the first meeting. If a complete application for a Master Use Permit that includes a design review component is filed more than 150 days after the first early design guidance public meeting, then such Master Use Permit application shall be considered under the Land Use Code and other land use control ordinances in effect at the time of the early design guidance public meeting that occurred most recently before the date on which a complete Master Use Permit application was filed, provided that such Master Use Permit application is filed within 90 days of the most recent meeting."

thanks,

Irene Wall

--- [Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov) wrote:

From: "Baker, Roberta" <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>  
To: "[iwall@serv.net](mailto:iwall@serv.net)" <[iwall@serv.net](mailto:iwall@serv.net)>, "O'Brien, Mike" <[Mike.O'Brien@seattle.gov](mailto:Mike.O'Brien@seattle.gov)>, "McConaghy, Eric" <[Eric.McConaghy@seattle.gov](mailto:Eric.McConaghy@seattle.gov)>, "Handy, Esther" <[Esther.Handy@seattle.gov](mailto:Esther.Handy@seattle.gov)>, alice poggi <[avpoggi@hotmail.com](mailto:avpoggi@hotmail.com)>  
CC: "Podowski, Mike" <[Mike.Podowski@seattle.gov](mailto:Mike.Podowski@seattle.gov)>, "Torgelson, Nathan" <[Nathan.Torgelson@seattle.gov](mailto:Nathan.Torgelson@seattle.gov)>, "Dorcy, Michael" <[Michael.Dorcy@seattle.gov](mailto:Michael.Dorcy@seattle.gov)>, "Swallow, Lori" <[Lori.Swallow@seattle.gov](mailto:Lori.Swallow@seattle.gov)>  
Subject: RE: Project 3020114 6726 Greenwood Avenue North  
Date: Wed, 21 Oct 2015 09:37:17 -0700

Irene – This reply to your September 25<sup>th</sup> emails is late because it was sent to me after I left for a 3 week vacation. I am back now, and catching up on emails.

In rereading my original response to you, I realize that I summarized the content, and didn't provide a "detailed" explanation of vesting. As a result, it appears I gave different information than you received from the PRC. In this case, to fully clarify, it is best to refer directly to the Land Use Code language that dictates our vesting rules. There is specific language that addresses projects that include Design Review, as reflected in the code section **23.76.026.C.2**, which I've pasted in below for reference:

- **23.76.026 - Vesting**

A.

Master Use Permit components other than subdivisions and short subdivisions. Except as otherwise provided in this [Section 23.76.026](#) or otherwise required by law, applications for Master Use Permit components other than subdivisions and short subdivisions shall be considered vested under the Land Use Code and other land use control ordinances in effect on the date:

1. That notice of the Director's decision on the application is published, if the decision is appealable to the Hearing Examiner;
2. Of the Director's decision, if the decision is not appealable to the Hearing Examiner; or
- 3.

A valid and fully complete building permit application is filed, as determined under Section 106 of the Seattle Building Code <sup>111</sup> or Section R105 of the Seattle Residential Code, if it is filed prior to the date established in subsections 23.76.026.A.1 or A.2.

B.

Subdivision and short subdivision components of Master Use Permits. An application for approval of a subdivision or short subdivision of land shall be considered under the Land Use Code and other land use control ordinances in effect when a fully complete application for such approval that satisfies the requirements of Section 23.22.020 (subdivision) or Sections 23.24.020 and 23.24.030 (short subdivision) is submitted to the Director.

C.

#### Design review component of Master Use Permits

1.

If a complete application for a Master Use Permit is filed prior to the date design review becomes required for that type of project, design review is not required.

2.

A complete application for a Master Use Permit that includes a design review component other than an application described in subsection 23.76.026.C.3 shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process or streamlined design review guidance process is submitted to the Director, provided that such Master Use Permit application is filed within 90 days of the date of the early design guidance public meeting if an early design guidance public meeting is required, or within 90 days of the date the Director provided guidance if no early design guidance public meeting is required. If more than one early design guidance public meeting is held, then a complete application for a Master Use Permit that includes a design review component shall be considered under the Land Use Code and other land use control ordinances in effect on the date a complete application for the early design guidance process is submitted to the Director, provided that such Master Use Permit application is filed within 150 days of the first meeting. If a complete application for a Master Use Permit that includes a design review component is filed more than 150 days after the first early design guidance public meeting, then such Master Use Permit application shall be considered under the Land Use Code and other land use control ordinances in effect at the time of the early design guidance public meeting that occurred most recently before the date on which a complete Master Use Permit application was filed, provided that such Master Use Permit application is filed within 90 days of the most recent meeting.

3.

A complete application for a Master Use Permit that includes a Master Planned Community design review component, but that pursuant to subsection 23.41.020.C does not include an early design guidance process, shall be considered under the Land Use Code and other land use control ordinances in effect on the date the complete application is submitted.

Based on the language highlighted in yellow above, a design review project would have a vesting date that is its EDG application date, **if** the timing of the subsequent MUP application met the timing parameters specified (for projects subject to full Design Review like project #3020114, either the MUP application date occurred within 90 days of the EDG public meeting, or when there is more than one EDG public meeting, the MUP application occurred within 150 days of the first EDG public meeting).

The information in our project tracking system indicates that the EDG application date for this project was on September 3<sup>rd</sup>, 2015. I also see that the first EDG public meeting was held this week on Monday, October 19<sup>th</sup>. I've also learned that there will be another EDG board meeting, yet to be scheduled, so this means that the project *could* vest to land use regulations in effect as of September 3<sup>rd</sup>, 2015 **ONLY** if the future MUP application is accepted by DPD within 150 days of October 19<sup>th</sup>, 2015. If the future MUP application comes in more than 150 days after October 19<sup>th</sup>, 2015, then the project would be subject to the Land Use regulations in effect on the date of **the MUP application**.

I don't believe that I've been included in previous conversations about the specific codes that you believe this project should be designed to, but DPD is bound by the vesting provisions that are stated in the code. There are no code provisions that allow the Director to modify or change these vesting rules, so the decision about which version of the code this project is subject to will be determined once a complete MUP application has been accepted by DPD, sometime in the future.



I hope this information has been helpful in clarifying our vesting rules. Let me know if you have further questions.  
Respectfully,

*Roberta Baker, Land Use Program Director  
Department of Planning & Development  
P.O. Box 34019  
700 - Fifth Avenue, Suite 2000  
Seattle, WA 98124-4019  
(206) 684-8195  
[roberta.baker@seattle.gov](mailto:roberta.baker@seattle.gov)*

***Building a Dynamic and Sustainable Seattle!***

**From:** Irene Wall [<mailto:iwall@serv.net>]  
**Sent:** Friday, September 25, 2015 7:48 PM  
**To:** Baker, Roberta; O'Brien, Mike; McConaghy, Eric; Handy, Esther; alice poggi  
**Cc:** Podowski, Mike; Torgelson, Nathan; Dorcy, Michael; Swallow, Lori  
**Subject:** Project 3020114 6726 Greenwood Avenue North

Roberta,

Thanks for your reply however it requires further explanation and differs from the advice we received from the PRC which certainly leads the reader to believe that vesting is tied to the actual EDG meeting, not merely an application.

From: PRC <[PRC@seattle.gov](mailto:PRC@seattle.gov)>  
To: "[iwall@serv.net](mailto:iwall@serv.net)" <[iwall@serv.net](mailto:iwall@serv.net)>  
Subject: RE: Status of 3006773 - 6010 Phinney  
Date: Wed, 12 Aug 2015 14:58:01 -0700

I believe the project becomes "vested" as long as the intake appointment happens within 90 days of the EDG. I only see that a pre-submittal conference took place on 8/6/15, no proposals have been formally submitted. I can't answer the question regarding the Omnibus and how that will affect this project. I would suggest contacting Lisa Rutzick (206-386-9049 [Lisa.Rutzick@seattle.gov](mailto:Lisa.Rutzick@seattle.gov)) , she may be able to assist you.

Thank you,  
PRC Staff

Below is an excerpt from the presubmittal notes dated August 6th, a time when the change on split zoned lots was well established in the legislation headed to Council. Why was the applicant not advised of this change when they specifically inquired about upcoming code changes? Why were they given the false impression that there were no such changes when DPD had already drafted the language months before for the Omnibus concerning split zoned lots that would have affected this project?

Did DPD instead encourage the developers to hurry up and submit their EDG application to specifically evade the clear intent of this code change?

This project should be subject to the code changes to be fair to the neighbors. That was the entire reason we have advocated for this clarification since last spring, a fact well known to Mike Podowski and Bill Mills with whom we met on March 2nd to discuss it. Eric McConaghy was also at that meeting with Cindi Barker, of the City Neighborhood Council. At that meeting we discussed the background for this curious split zone mapping and Mike described the oddity as an "error in mapping." Why should these property owners be penalized by this error, especially since the Phinney Ridge Community Council tried to get it corrected well before this project materialized? This setback is required to meet the intent of land use policies calling for transitions between zones of greater and lesser intensity. There is no transition zone along Greenwood/Phinney between the NC2-40 and the SF5000 zones. The same upper level setback that would be required anywhere else between a large commercial building and a SF home should pertain here as well.

23.76.026 - also provides for vesting under the land use controls in effect at the time of the Master Use Permit application. This project is far from that application and before the applicant invests any more time, DPD should correct the clear error from the presubmittal meeting and ensure that the project respects the setback requirements. Waiting for the MUP application is a dereliction of duty to all parties.

Irene Wall

cc: Alice Pogee, PRCC President

--- [Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov) wrote:

From: "Baker, Roberta" <[Roberta.Baker@seattle.gov](mailto:Roberta.Baker@seattle.gov)>

To: "[iwall@serv.net](mailto:iwall@serv.net)" <[iwall@serv.net](mailto:iwall@serv.net)>

CC: "Podowski, Mike" <[Mike.Podowski@seattle.gov](mailto:Mike.Podowski@seattle.gov)>, "Torgelson, Nathan" <[Nathan.Torgelson@seattle.gov](mailto:Nathan.Torgelson@seattle.gov)>, "Dorcy, Michael" <[Michael.Dorcy@seattle.gov](mailto:Michael.Dorcy@seattle.gov)>, "Swallow, Lori" <[Lori.Swallow@seattle.gov](mailto:Lori.Swallow@seattle.gov)>

Subject: FW: Project 3020114 6726 Greenwood Avenue North

Date: Thu, 24 Sep 2015 13:31:05 -0700

Irene –

Your email was forwarded to me by Mike Podowski. Thank you for sharing this observation that may impact this new development - we will make sure to share that information with the applicant.

Vesting for Design Review projects is keyed to the Early Design Guidance application date, if the subsequent MUP application meets certain timing requirements as outlined in Land Use Code Section 23.76.026C. Because of this, we will not know yet whether the project will be subject to the change in code, but will need to wait until after the MUP application is accepted at some future date.

Please feel free to forward this message to Alice Poggi, as her email address did not come through for me in the forwarding process.

Thanks again for this feedback –  
Respectfully,

***Roberta Baker, Land Use Program Director***

*Department of Planning & Development*

*P.O. Box 34019*

*700 - Fifth Avenue, Suite 2000*

*Seattle, WA 98124-4019*

*(206) 684-8195*

*[roberta.baker@seattle.gov](mailto:roberta.baker@seattle.gov)*

***Building a Dynamic and Sustainable Seattle!***

---

**From:** Podowski, Mike

**Sent:** Wednesday, September 23, 2015 9:08 AM

**To:** Baker, Roberta; Mills, William

**Subject:** FW: Project 3020114 6726 Greenwood Avenue North

FYI...



Mike Podowski

Land Use Policy Manager

City of Seattle, Department of Planning and Development

O: 206.386-1988 | M: 206.290-1596 | [mike.podowski@seattle.gov](mailto:mike.podowski@seattle.gov)



**From:** Irene Wall [<mailto:iwall@serv.net>]  
**Sent:** Tuesday, September 22, 2015 6:17 PM  
**To:** Podowski, Mike; Torgelson, Nathan  
**Cc:** Swallow, Lori; Dorcy, Michael; alice poggi  
**Subject:** Project 3020114 6726 Greenwood Avenue North

Mike, Nathan, Lori & Michael,

The redevelopment along Greenwood/Phinney Avenue is getting a lot of attention lately; one can hardly ignore the cranes at 68th and now comes the proposal just across the street at 6726. We noticed that the EDG meeting is scheduled for October 19th and viewed the documents showing the 4 alternatives to be discussed. However since passage of this year's Omnibus Ordinance 124843 (signed by the Mayor on August 21st) it appears that none of the alternatives actually are code compliant as indicated drawings. It would be a disservice to the developer and to the community to proceed until the plans can be amended accordingly.

It's our understanding that the split zone issue is now resolved and that will establish the requirement for a 15-foot setback from the rear property line above 13-feet for this proposed building per the amended section 23.47.014.

We hope that DPD has informed the developer of this because it appears that information provided to them at the August 6th presubmittal meeting is incorrect (assuming that the meeting notes reflect accurately the advice provided.) As we know, the matter of amending 23.47.014 was included in the early discussion drafts in the spring and the change to the criteria to >50% was included in the early July version of the legislation per the Clerk's website.

Please let us know if this changes the timing of the Early Design Guidance session.

Thanks

Irene Wall  
PRCC Board Member

cc: Alice Pogee, PRCC President

# Attachment 4

6 October 2015

Dear NW Board Members:

Enclosed find the packets for #3020114, a proposal for a 60 unit mixed-use building with 3000 sq. ft. of retail commercial space on the ground floor. No parking is proposed for the project. The structure will replace a one-story commercial brick building which will be demolished to make room for it.

There are a couple of issues which may bring out the local folks, based upon early returns: the fact that no parking is proposed, and the fact that the project is potentially vested prior to a change in the Land Use Code now in effect that would require that the east property line (abutting a strip of neighborhood commercial zoning on the split zone (commercial and single family properties to the east) be treated as if abutting a residential zone for setbacks. The overall options for what is being proposed are set forth fairly clearly in the packets as you will see.

Looking forward to our meeting on Monday, the 19<sup>th</sup>, at the Ballard Community Center.

Michael

(206) 615-1393

# Attachment 5

**From:** [Baker, Roberta](#)  
**To:** [Mills, William](#); [Podowski, Mike](#)  
**Subject:** RE: Project 3020114 6726 Greenwood Avenue North  
**Date:** Wednesday, September 23, 2015 12:45:42 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

I would agree with Bill, and would add that a complete application is different than a code compliant set of plans – it doesn't have to meet every code coming in the door, compliance (and departures) will get worked on through the cycles of review by staff and the board. they may want to be prepared to address this issue at the EDG meeting however.....

---

**From:** Mills, William  
**Sent:** Wednesday, September 23, 2015 9:35 AM  
**To:** Podowski, Mike; Baker, Roberta  
**Subject:** RE: Project 3020114 6726 Greenwood Avenue North

Hmm – Well, the entry in Hansen says that the EDG application was submitted on September 3, and the omnibus became effective on Monday September 21. They may be vested under 23.76.026.C.2 if they have successfully submitted a complete application for the EDG process. Stephanie Commandest logged in the application on September 3 and it went to Bob Klein, presumably to schedule the EDG meeting, also on September 3. The EDG has been assigned to Michael Dorcy and the EDG meeting scheduled. I am not sufficiently familiar with the EDG process to know for certain when DPD considers that a complete application has been submitted, but it sure looks to me like the date would be September 3.

---

**From:** Podowski, Mike  
**Sent:** Wednesday, September 23, 2015 9:08 AM  
**To:** Baker, Roberta; Mills, William  
**Subject:** FW: Project 3020114 6726 Greenwood Avenue North

FYI...

Mike Podowski  
Land Use Policy Manager  
City of Seattle, [Department of Planning and Development](#)  
O: 206.386-1988 | M: 206.290-1596 | [mike.podowski@seattle.gov](mailto:mike.podowski@seattle.gov)



**From:** Irene Wall [<mailto:iwall@serv.net>]  
**Sent:** Tuesday, September 22, 2015 6:17 PM  
**To:** Podowski, Mike; Torgelson, Nathan  
**Cc:** Swallow, Lori; Dorcy, Michael; alice poggi  
**Subject:** Project 3020114 6726 Greenwood Avenue North

Mike, Nathan, Lori & Michael,

The redevelopment along Greenwood/Phinney Avenue is getting a lot of attention lately; one can hardly ignore the cranes at 68th and now comes the proposal just across the street at 6726. We noticed that the EDG meeting is scheduled for October 19th and viewed the documents showing the 4 alternatives to be discussed. However since passage of this year's Omnibus Ordinance 124843 (signed by the Mayor on August 21st) it appears that none of the alternatives actually are code compliant as indicated drawings. It would be a disservice to the developer and to the community to proceed until the plans can be amended accordingly.

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Please let us know if this changes the timing of the Early Design Guidance session.

Thanks

Irene Wall

PRCC Board Member

cc: Alice Pogee, PRCC President



# Attachment 6

# Seattle Permits

— part of a multi-departmental City of Seattle series on getting a permit

## Design Review: General Information, Application Instructions, and Submittal Requirements

Updated March 13, 2008

The City of Seattle's design review process requires that certain new construction projects undergo a discretionary review of their siting and design characteristics.

This Client Assistance Memo (CAM) is intended to provide general information about design review and offer detailed instructions about the application and submittal requirements and review process.

### What Is Design Review?

Design review is a component of a Master Use Permit (MUP) application and is required for most new commercial, mixed-use and multifamily developments.

The city administers other types of design review, such as the review of public capital improvements projects, landmarks, or development in historic districts. Those projects are not covered by the design review process outlined here. They are explained in the DPD publication *This Is Project Review in Seattle* and online at: [www.seattle.gov/dpd/Design\\_Coordination](http://www.seattle.gov/dpd/Design_Coordination).

Design review provides a forum through which neighborhoods, developers, architects, and city staff can work together to ensure that new developments contribute positively to Seattle's neighborhoods.

Design review has three principal objectives:

1. To encourage better design and site planning that enhances the character of the city and ensures that new development sensitively fits into neighborhoods.
2. To provide flexibility in the application of development standards.

3. To improve communication and participation among developers, neighbors and the city early in the design and siting of new development.

Design review is administered by the Department of Planning and Development (DPD), as are other MUP components like environmental review (SEPA), variances, rezones, etc.

Like these other components, design review applications involve public notice and opportunity for comment. Unlike other components, most projects subject to design review are brought before a Design Review Board for its recommendations, or, alternatively, to DPD staff in what is referred to as "administrative design review."

The final decision on the design review component is made by the director of DPD, along with decisions on any other MUP components. This decision may be appealed to the Seattle hearing examiner.

### Design Review Guidelines

In order to provide greater predictability to designers, developers and property owners, and ensure greater consistency in design review decision-making, the city has published siting and design guidelines. One set of guidelines applies throughout the city's neighborhoods and is entitled *Design Review: Guidelines for Multifamily & Commercial Buildings*; the other applies to downtown Seattle and is entitled *Design Review: Guidelines for Downtown Development*.

In addition, many neighborhoods have adopted and published neighborhood-specific extensions of the multifamily and commercial guidelines.

**\*NOTE:** *Neighborhood-specific guidelines augment the Guidelines for Multifamily and Commercial Development and the Guidelines for Downtown Development by addressing more specific design concerns that have historical, cultural or architectural significance to a particular neighborhood. Applicants should check with DPD to determine whether the proposed project lies within an area which is covered by neighborhood-specific guidelines.*

[www.seattle.gov/dpd](http://www.seattle.gov/dpd)



These publications include a discussion of the design review process and provide guidelines covering these six elements:

- site planning
- pedestrian environment
- height bulk and scale
- architectural elements, expression and materials
- public amenities, vehicle access and parking
- streetscape and landscaping

These guidelines are available by hard copy at the DPD Public Resource Center and online at: [www.seattle.gov/dpd/designguidelines](http://www.seattle.gov/dpd/designguidelines)

**Chart A: Mandatory Design Review**

| ZONE   | THRESHOLD   |
|--|---|
| Lowrise 3 (L3) & Lowrise 4 (L4)  | More than 8 dwelling units and/or 4,000 sq. ft. non-residential space     |
| Midrise (MR) & Highrise (HR)   | More than 20 dwelling units and/or 4,000 sq. ft. non-residential space    |
| Neighborhood Commercial 1, 2, & 3 (NC1, NC2 & NC3)   | More than 4 dwelling units and/or 4,000 sq. ft. non-residential space     |
| Commercial 1 & 2 (C1 and C2) when abuts or across a street or alley from SF zoned land, in Urban Villages, or in a specific mapped area within the Lake City neighborhood. (See SMC 23.41.004.A) | More than 4 dwelling units and/or 12,000 sq. ft. non-residential space    |
| Seattle Mixed (SM)   | More than 20 dwelling units and/or 12,000 sq. ft. non-residential space   |
| Stadium Transition Overlay District  | Any structure that exceeds 120 ft. in width on any single street frontage |
| Downtown Office Core 1 & 2 (DOC 1 & DOC 2)   | More than 20 dwelling units and/or 50,000 sq.ft. non-residential space    |
| Downtown Retail Core (DRC), Downtown Mixed Commercial (DMC), Downtown Mixed Residential (DMR), Downtown Harborfront 1 & 2 (DH1 & DH2)  | More than 20 dwelling units and/or 20,000 sq.ft. non-residential space    |
| Neighborhood Commercial - 2 (NC 2)   | Lodging uses up to 25,000 sq.ft. (as conditional use per 23.47A)          |

## What are the Different Types of Design Review?

**Mandatory Design Review:** Applicants of all proposals over the thresholds (see Chart A) are required to go through the design review process, including presentations to the Design Review Board. The board holds at least one early design guidance meeting, followed by at least one recommendation meeting after submittal of a MUP application. The code allows either the applicant or DPD to require additional early design guidance (EDG) meetings.

**Voluntary Design Review:** There are two types of voluntary review for those applicants who seek development standard departures:

1. Applicants of projects under the mandatory design review thresholds (see Chart A) who seek development standard departures may voluntarily submit their project to the design review process. These projects are not reviewed by the Design Review Board and therefore do not require a public design review meeting. Instead, the review is administered by a DPD land use planner.
2. Applicants of projects that exceed the mandatory design review thresholds in Lowrise Duplex/Triplex, Lowrise1, and Lowrise 2 zones and in C1 and C2 zones not included in Chart A who seek development standard departures may voluntarily submit their project for review by the Design Review Board, including presentation of design proposals at a minimum of two public meetings. The board holds at least one early design guidance meeting, followed by at least one recommendation meeting.

## What Is Development Standard Departure?

A development standard departure allows a project design to achieve flexibility in the application of most of the prescriptive land use code standards or requirements. In order to allow a departure from a land use code standard, an applicant must demonstrate that it would result in a development that meets or exceeds the intent of the adopted design guidelines.

Departures may be granted from any multifamily and commercial or downtown land use code standard or requirement, the following are not:

1. Procedures.
2. Permitted, prohibited or conditional use provisions.
  - a) Departures may be granted from development standards associated with required downtown street level uses.

3. Residential density limits.
4. Floor area ratios (FARs).
5. Maximum size of use.
6. Structure height, except for:
  - a) Departures may be granted for an additional three feet for NC3-65 properties in the Roosevelt Commercial Core.
  - b) Departures up to nine additional feet may be granted for NC3-65 zoned properties within Ballard Municipal Center plan height per exhibit *SMC 23.41.012B*.
7. Quantity of parking, except for certain conditions in the Ballard Municipal Center Master Plan Design Guidelines 2000.
8. Shoreline District provisions in *SMC 23.60*.
9. Standards for storage of solid-waste containers.
10. Noise and odor standards.
11. Provisions of Transportation Concurrency Project Review Systems.
12. Provisions of *SMC 23.53* Requirements for Streets, alleys, and easements, except for:
  - a) Departures may be granted from easement standards in *SMC 23.53.025*.
  - b) Departures may be granted for structural building overhangs.
13. Measurement techniques in *SMC 23.86* and Definitions in *SMC 23.84*.

In addition, departures may be granted from any downtown standard or requirement except for the following:

1. FAR and provisions for exceeding the base FAR or achieving bonus development per *SMC 23.49*.
2. Minimum size for Planned Community Development per *SMC 23.49.036*.
3. Average floor area limit for stories in residential use in chart *SMC 23.49.058D*.
4. Provisions for combined lot per *SMC 23.49.041*.
5. Tower spacing requirements per *SMC 23.49.058E*.
6. Maximum parking limit.
7. Quantity of open space requirement for major downtown office projects.
8. Standards for the location of access to parking.
9. View corridor requirements, except for:
  - a) Departures may be granted to allow open railings on upper level roof decks or open space depending on minimal view impact.

## What Is the Design Review Board?

Most projects subject to design review are brought before a Design Review Board, both before and after MUP application.

The city is divided into **seven areas** (boundaries are indicated on the map on page 6), each with its own **five-member board\***. The five volunteer members represent the following constituencies:

- design professions
- development interests
- community at-large interests
- local residential interests
- local business interests

Board members are appointed by the Mayor and Council and confirmed by City Council.

The manager of the design review program may appoint former board members to serve as substitutes for current members who are periodically absent.

\*The Design Review Board participates in the city's *Get Engaged* program, which places young adults (18-29) on the city's boards for one-year appointments. These members have full voting rights. Each year, a *Get Engaged* member serves on one of the seven Design Review Boards, bringing the total number of members for that board to six.

## Who Is the Design Review Planner?

DPD assigns a land use planner to each design review project. The planner explains the DPD permitting process, specifically the steps to navigate design review and associated reviews, such as zoning. The planner attends the meetings of the Design Review Board and takes notes of the board's deliberations. Following the board meeting, the planner prepares and distributes a report, which the applicant uses to guide the design response.

## What Is the Design Review Process?

### STEP 1

#### APPLY FOR PRESUBMITTAL CONFERENCE AND EARLY DESIGN GUIDANCE

Design review requires a presubmittal conference with a DPD land use planner. This conference may be combined with the acceptance and screening of the (EDG) submittal application. The applicant may also choose to submit an EDG Drop-Off application at a later time following the procedure outlined in *CAM 105, Drop-Off Submittal Program*.

At the presubmittal conference, the project site, context and general development program will be discussed. This is an opportunity to discuss possible development standard departures or other important preliminary issues.

Presubmittal forms and instructions are available online at [www.seattle.gov/dpd/publications/forms](http://www.seattle.gov/dpd/publications/forms), or from the Applicant Services Center (ASC), 20th floor, Seattle Municipal Tower, 700 Fifth Ave. Completed forms may be dropped off, mailed or faxed to the ASC. ASC support staff will review the request, note pertinent information, and call back with available appointment times and an assigned project number.

Fees for presubmittal conferences and additional hours of review are listed in the current version of the Fee Subtitle available online on DPD's "Fees" page at [www.seattle.gov/dpd/about/fees](http://www.seattle.gov/dpd/about/fees), or at the Public Resource Center on the 20th Floor of Seattle Municipal Tower at 700 Fifth Ave., (206) 684-8467.

### How to submit an EDG Drop-Off Packet

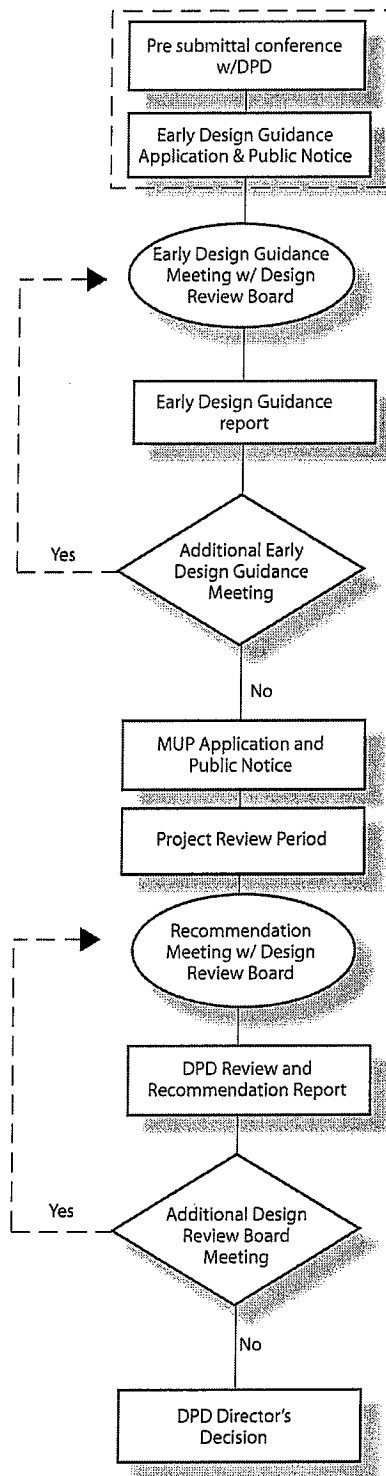
At the presubmittal conference, the applicant may also submit an *EDG Drop-off Packet* that will be used to give public notice of the project, schedule the public meeting for projects that are required to go through the design review process, and submit an initial 11"x17" design proposal packet.

The following information must be included in the EDG Application Drop-off Packet. All material listed below should be placed in a large manila envelope with an identification label including a project number:

1. Completed Drop-Off Submittal Fee Worksheet with two (2) copies of receipt from DPD Cashier (20th floor, Seattle Municipal Tower) verifying fee payment.
2. Signed Agent's Letter of Authorization from owner, unless owner is present.
3. Signed Financial Responsibility Form.
4. Copy of Pre-Application Site Visit Report.
5. Preliminary Application Form.
6. Copy of Presubmittal Conference Notes or Signed Waiver of Presubmittal Letter.
7. Completed Application "Attachment A" (contained in this CAM).
8. Two (2) hard copies of the 11"x17" *EDG Analytic Design Proposal Packet* developed according to the instructions below.

City of Seattle

# Design Review Process



**See Step 1: Apply for Presubmittal Conference and Early Design Guidance**  
 Proponent receives information about process and a copy of the applicable Design Review guidelines

Notice mailed to property owners and residents within 300'. Land Use Information Bulletin placards placed on site.

**See Step 2: EDG Design Review Board Meeting**

Citizens identify community concerns and the Design Review Board establishes priorities for the applicant to follow among the City's design guidelines.

Written summary of priority guidelines issued by DRB is mailed to all parties by DRB.

At request of DPD or proponent, proponent returns to present concepts to Design Review Board.

**See Step 3: Master Use Permit (MUP) Application**

DPD public review coincides with zoning, SEPA, and other land use reviews.

**See Step 4: Design Review Board Recommendation Meeting**

DRB considers public comments and reviews project against documented design guidance and makes recommendation to director.

**See Step 5: Director's Decision**

Design review decision issued by Director in conjunction with other required land use approvals

**See Step 6: Appeals**

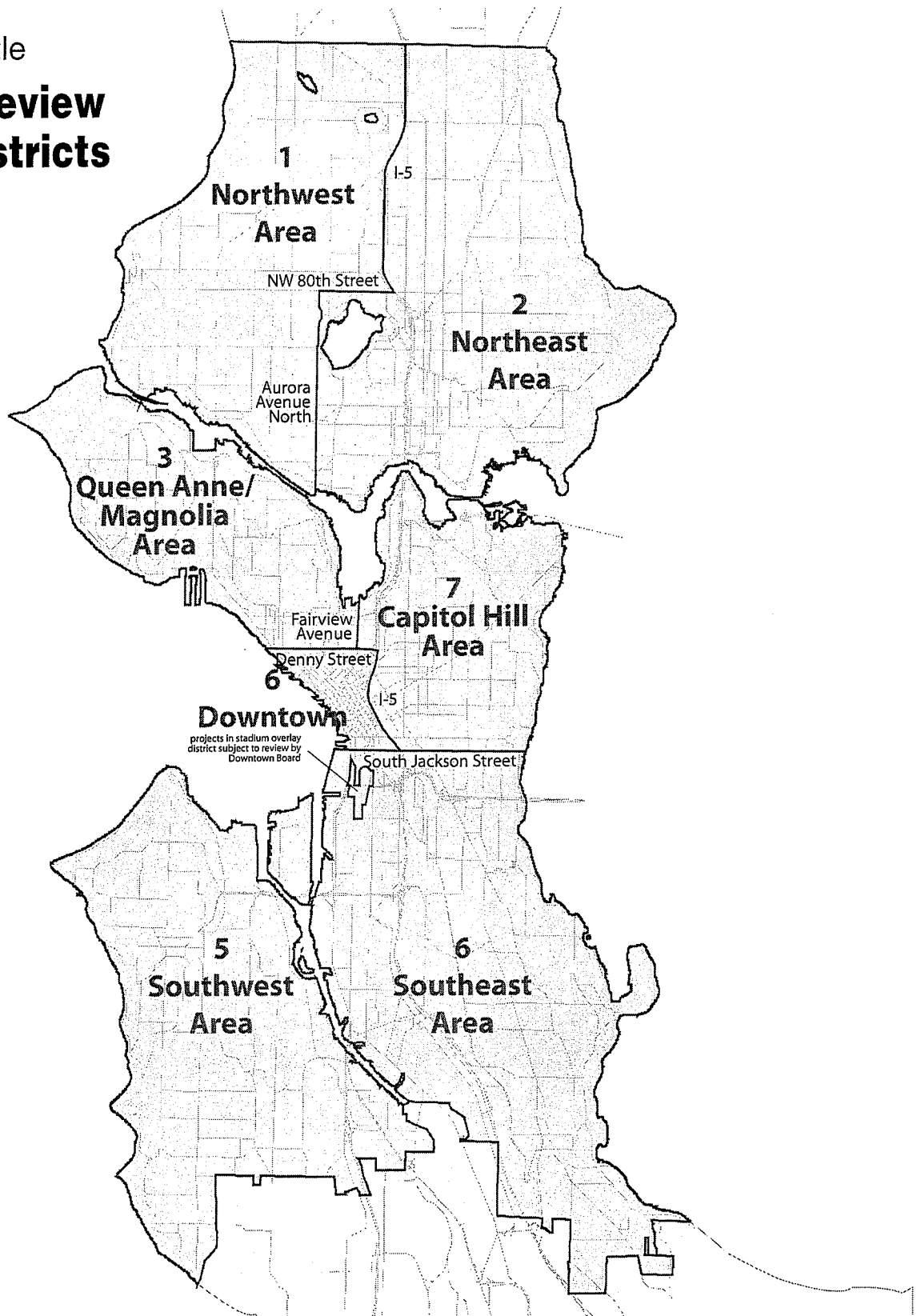
Director's decisions appealable to Hearing Examiner within 14 days (consolidated with any other appeals).

**See Step 7: Post Permit**

Any revisions an applicants wishes to make must be presented to the Land Use Planner for review.

City of Seattle

# Design Review Board Districts



### How to complete an EDG Analytic Design Proposal Packet

The 11"x17" packet enables the applicant to describe the parameters affecting the design and graphically demonstrate the project proposal. It should include:

1. Statement of development objectives
  - a) Number of residential units (approx).
  - b) Amount of commercial square footage (approx).
  - c) Number of parking stalls (approx).
2. Urban design analysis. On the graphics below, identify views, barriers and traffic flows that affect the site and call out major building names and types:
  - a) Vicinity map, indicating surrounding uses, structures and zoning.
  - b) Axonometric or other three-dimensional drawing, photos or models of the nine block area surrounding the project site. Include call-out notes on drawings and a brief narrative stating what design cues can be gleaned to develop design alternatives.
  - c) Aerial photograph.
  - d) Photo montage of the streetscape (both side of the street) identifying the site.
3. Design guidelines
  - a) Briefly list those guidelines that the applicant thinks are most pertinent to the site and design of the project.
4. Site analysis
  - a) Map of zoning, existing uses and structures.
  - b) Topography and tree survey.
  - c) Site photos.
  - d) Map of access opportunities and constraints.
5. Three feasible alternative architectural concepts. For each concept, list pros and cons. Do not include detailed parking layouts and floorplans:
  - a) Show siting, massing, open space, façade treatments, and access in the same graphic context and for the same development objective.
  - b) Submit a code complying scheme. It may be counted as one of the three concepts.

6. Three dimensional studies and sketches at the street level.
7. Summary of potential development standard departures.
  - a) Table comparing proposed design to code requirements.
  - b) How proposed design intends to meet or exceed the city's design guidelines

### Review of Materials

The planner at your presubmittal conference will review the material for completeness and accept your application for EDG intake or direct you how to complete the *EDG Drop-off Packet* after the presubmittal conference. Applications submitted after the presubmittal conference or after a waiver of the presubmittal conference has been granted must be submitted in person at the ASC as detailed in *CAM 105, Drop-Off Submittal Program*.

When your EDG submittal is deemed complete, your project's EDG meeting will be scheduled and usually occurs about 30 days later.

See fee details on page 6.

### STEP 2

#### EDG DESIGN REVIEW BOARD MEETING

Once the EDG application has been taken in, DPD staff will contact the applicant and set up an evening public meeting in the Design Review Board area where the project site is located. The Design Review Board members, the general public and the project applicants are invited.

A calendar of all scheduled, upcoming meetings is maintained at [www.seattle.gov/designreview](http://www.seattle.gov/designreview).

Notice of the meetings is also provided in DPD's weekly Land Use Information Bulletin (available online at [www.seattle.gov/dpd/notices](http://www.seattle.gov/dpd/notices)), through mailed notice to residents and property owners within 300 feet of the site, and with a yellow placard posted at the project site.

In advance of the meeting, the land use planner may ask the applicant to revise the 11"x17" EDG design proposal packet they originally submitted at intake so that it better meets the criteria outlined in *How to Complete an EDG Analytic Design Proposal Packet* (see page 7). Once the planner indicates that the applicant's proposal packet is sufficient and ready to be reviewed by the board, the applicant will send seven hard copies and one digital copy



(saved as a pdf file) of the 11"x17" packet to DPD five business days in advance of the meeting. The hard copies should be addressed to the land use planner; the digital copies should be sent to design review administrative staff. Instructions for creating and sending the pdf file are online at [www.seattle.gov/dpd/pdfinstructions](http://www.seattle.gov/dpd/pdfinstructions). DPD distributes the hard copies to board members and posts the digital copy to DPD's database and online.

At the board meeting, applicants will present information about the surrounding context and the site, as well as describe their development objectives and share early design concepts for massing, open space, and facade treatments, and show examples of other projects they have completed. The applicant's presentation to the board should be concise. It should include large graphics that can be easily read from a distance. The applicant should bring any materials needed for the presentation, such as easels, laptops, extension chords or projectors.

After the applicant's presentation, citizens are invited to offer their comments and concerns regarding the siting and design of development on the site. Board members identify the design guidelines that are of the highest priority for the site, as well as incorporate any relevant comments from the public in their early design guidance.

A DPD land use planner will summarize the board's early design guidance in a report that will be sent to all parties that attended this meeting or who have written to DPD regarding the project. These reports, as well as the 11"x17" design proposals, are also available in the archive at [www.seattle.gov/designreview](http://www.seattle.gov/designreview).

### STEP 3 MASTER USE PERMIT (MUP) APPLICATION

The applicant develops the schematic design response to the guidelines, consulting with the assigned DPD planner and the applicant then schedules a MUP intake appointment. Upon application, the applicant must fill out and submit an *Application for Design Review* (see Attachment B on page 16). All outstanding fees must be paid upon application for the MUP.

When the applicant applies for a MUP which includes a design review component, other necessary components such as zoning, SEPA, administrative conditional use, etc., must be included. The design review plans should include at least four colored and shadowed elevations on a single sheet at minimum

and a colored site/landscape drawing embedded on design review sheets of the MUP plan sets showing applicant's initial design response.

In addition, the MUP level plans and drawings showed include such details as exterior materials and/or colors, departure documentation, and justifying in narrative form any requested development standard departures.

Once the application has been accepted, a large sign will be placed on the site by the applicant, mailed notice will be sent, and a public comment period will be provided, allowing citizens to comment on any and all aspects of the project, including siting and design issues.

### STEP 4 DESIGN REVIEW BOARD RECOMMENDATION MEETING

Once the project design has been sufficiently developed in response to the early design guidance and after initial zoning review has occurred, the Design Review Board will reconvene to consider the proposed design at an evening meeting open to the public. The planner will review, in advance of the meeting, the applicant's 11"x17" design proposal packet and recommend updating the packet as needed. The applicant will send seven hard copies and one digital copy (saved as a pdf file) of the 11"x17" packet to DPD five business days in advance of the meeting. The hard copies should be addressed to the land use planner; the digital copies should be sent to design review administrative staff. Instructions for creating and sending the pdf file are online at [www.seattle.gov/dpd/pdfinstructions](http://www.seattle.gov/dpd/pdfinstructions). DPD distributes the hard copies to board members and posts the digital copy to DPD's database and online.

In the presentation to the Design Review Board, the applicant should highlight their response to the EDG design guidelines and clearly describe the departures requested. The applicant should prepare a table of departure requests that compares the proposed design in quantitative terms to the code requirements. The applicant's presentation to the board should be concise. It should include large graphics that can be easily read from a distance. The applicant should bring any materials needed for the presentation, such as easels, laptops, extension cords or projectors.

In many cases, applicants may also be required to submit 3D models, photo montages, computer-assisted graphic images, or other graphic material to aid Design Review decision-making. These details

will be arranged with the assigned land use planner, who will indicate when best to submit such additional information.

The board will review the design in light of the concerns, public comments and the previously identified early design guidance. The board will deliberate and offer its official recommendations on the design and the appropriateness of any requested development standard departures. DPD will send a written summary of the board's recommendations to all parties of records.

#### **STEP 5 DIRECTOR'S DECISION**

The DPD director makes the final decision on the design review component of a MUP application. However, if the Design Review Board's recommendation was offered by at least four members, it will be considered a consensus recommendation that the director must adopt in most cases. The director may override the board's recommendation only if he/she believes the board has made a clear error in the application of the guidelines, has exceeded its authority, or has required design changes that contravene other non-waivable local, state or federal requirements.

Conversely, when the board's recommendation is supported by less than four members, the director will give due consideration to the board's recommendation in reaching his/her decision, along with any minority opinions, staff recommendations and public comment.

The director's design review decision will be issued together with the decisions on other MUP components related to the project, with written notice to all parties of record, as well as notice in the weekly Land Use Information Bulletin (available online at [www.seattle.gov/dpd/notices](http://www.seattle.gov/dpd/notices)). Final issuance of the permit often requires updates to the MUP plans to comply with design review conditions.

#### **STEP 6 APPEALS**

As with other discretionary MUP-component decisions, the design review decision may be appealed by any interested party. Appeals may be made during the 14-day appeal period by letter and a \$50 filing fee to the Seattle hearing examiner. The hearing examiner must afford substantial weight to the director's decision, basing any decision to the contrary on a finding of clear error or omission, not simply of differing opinion or conclusion. There is no

appeal of a design review decision to the Seattle City Council.

#### **STEP 7 POST PERMIT REVIEW AND REVISIONS**

Building permit applications for design review projects are reviewed by the land use planner, who compare this set of plans against the MUP plans to spot any revisions.

Any revisions an applicant wishes to make must be presented to the land use planner for review. Projects that have undergone design review have less flexibility for future revisions than other projects. If the revision is minor and clearly within the intent of the original design and the Design Review Board's consideration, the planner can approve it with no additional administrative process required.

Major revisions or departures from the intent of the original design or board's approval will not be approved as a revision. On some occasions, the Design Review Board may be asked to consider a revision, but only after additional public notice has been given and only at an already-scheduled Design Review Board meeting. All additional administrative costs will be borne by the applicant.

The land use planner will inspect constructed projects prior to occupancy to ensure compliance with design review approval.

## Additional Information on Design Review

For a wealth of information on Seattle's Design Review Program, visit [www.seattle.gov/designreview](http://www.seattle.gov/designreview). In addition to basic program information, the site features:

- A calendar of upcoming design review meetings.
- An "Applicant's Toolbox."
- A "Gallery of Great Examples" of design review projects.
- Board member bios.
- Design proposal packets (PDFs).
- Meeting reports.
- The Community Guide to Design Review.

Printed design review resources are available at the DPD Public Resource Center, 20th floor, Seattle Municipal Tower, 700 Fifth Ave.

Available materials include:

- *Design Review: Guidelines for Multifamily & Commercial Buildings*, October 1993; revised January 1998
- *Design Review: Guidelines for Downtown Development*, April 1999
- *Neighborhood-Specific Design Review Guidelines*

## Access to Information

Links to electronic versions of DPD **Client Assistance Memos (CAMs)**, **Director's Rules**, and the **Seattle Municipal Code** are available on the "Publications" and "Codes" pages of our website at [www.seattle.gov/dpd](http://www.seattle.gov/dpd). Paper copies of these documents, as well as additional regulations mentioned in this CAM, are available from our Public Resource Center, located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave. in Downtown Seattle, (206) 684-8467.

# Attachment A

## City of Seattle Application for Early Design Guidance

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### PART I: CONTACT INFO

1. **Property Address** \_\_\_\_\_  
\_\_\_\_\_

2. **Project number** \_\_\_\_\_

Additional related project number(s): \_\_\_\_\_

4. **Owner/Lessee Name** \_\_\_\_\_

5. **Contact Person\* Name** \_\_\_\_\_

Firm \_\_\_\_\_

Mailing Address \_\_\_\_\_

City State Zip \_\_\_\_\_

Phone \_\_\_\_\_

Email address \_\_\_\_\_

6. **Applicant's Name** \_\_\_\_\_

Relationship to Project \_\_\_\_\_

7. **Design Professional's Name** \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Email address \_\_\_\_\_

8. **Applicant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

\*Only the **contact person** will receive notice of the meeting. The **contact person** is responsible for informing other pertinent parties.

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**LEGAL DISCLAIMER:** *This Client Assistance Memo (CAM) should not be used as a substitute for codes and regulations. The applicant is responsible for compliance with all code and rule requirements, whether or not described in this CAM.*

## **PART II: SITE AND DEVELOPMENT INFO**

*Attach additional sheets as needed.*

1. Please describe the existing site, including location, existing uses and/or structures, topographical or other physical features, etc.
  
2. Please indicate the site's zoning and any other overlay designations, including applicable Neighborhood-Specific Guidelines.
  
3. Please describe neighboring development and uses, including adjacent zoning, physical features, existing architectural and siting patterns, views, community landmarks, etc.
  
4. Please describe the applicant's development objectives, indicating types of desired uses, structure height (approx), number of residential units (approx), amount of commercial square footage (approx), and number of parking stalls (approx). Please also include potential requests for departure from development standards.

---

## **PART III: EDG ANALYTIC DESIGN PROPOSAL PACKETS**

***Together with a written response to the questions above, please provide two copies of the following:***

1. Statement of development objectives.
  - a) Number of residential units (approx).
  - b) Amount of commercial square footage (approx).
  - c) Number of parking stalls (approx).
2. Urban design analysis. On the graphics below, identify views, barriers and traffic flows that affect the site and call out major building names and types:
  - a) Vicinity map, indicating surrounding uses, structures and zoning.
  - b) Axonometric or other three-dimensional drawing, photos or models of the 9 block area surrounding the project site. Include call-out notes on drawings and a brief narrative stating what design cues can be gleaned to develop design alternatives.
  - c) Aerial photograph.
  - d) Photo montage of the streetscape (both side of the street) identifying the site.
3. Design guidelines.
  - a) Briefly list those guidelines that the applicant thinks are most pertinent to the site and design of the project.
4. Site analysis.
  - a) Map of zoning, existing uses and structures.
  - b) Topography and tree survey.

- c) Site photos.
- d) Map of access opportunities and constraints.
- 5. Three feasible alternative architectural concepts. For each concept, list pros and cons. Do not include detailed parking layouts and floorplans:
  - a) Show siting, massing, open space, façade treatments, and access in the same graphic context and for the same development objective.
  - b) Submit a code complying scheme. It may be counted as one of the three concepts.
- 6. Three dimensional studies and sketches at the street level.
- 7. Summary of requested development departures.
  - a) Code standards and amounts.
  - b) Proposed amounts.
  - c) Explain how the proposed design intends to meet or exceed the City's design guidelines.

## Attachment B

Project No. \_\_\_\_\_

City of Seattle

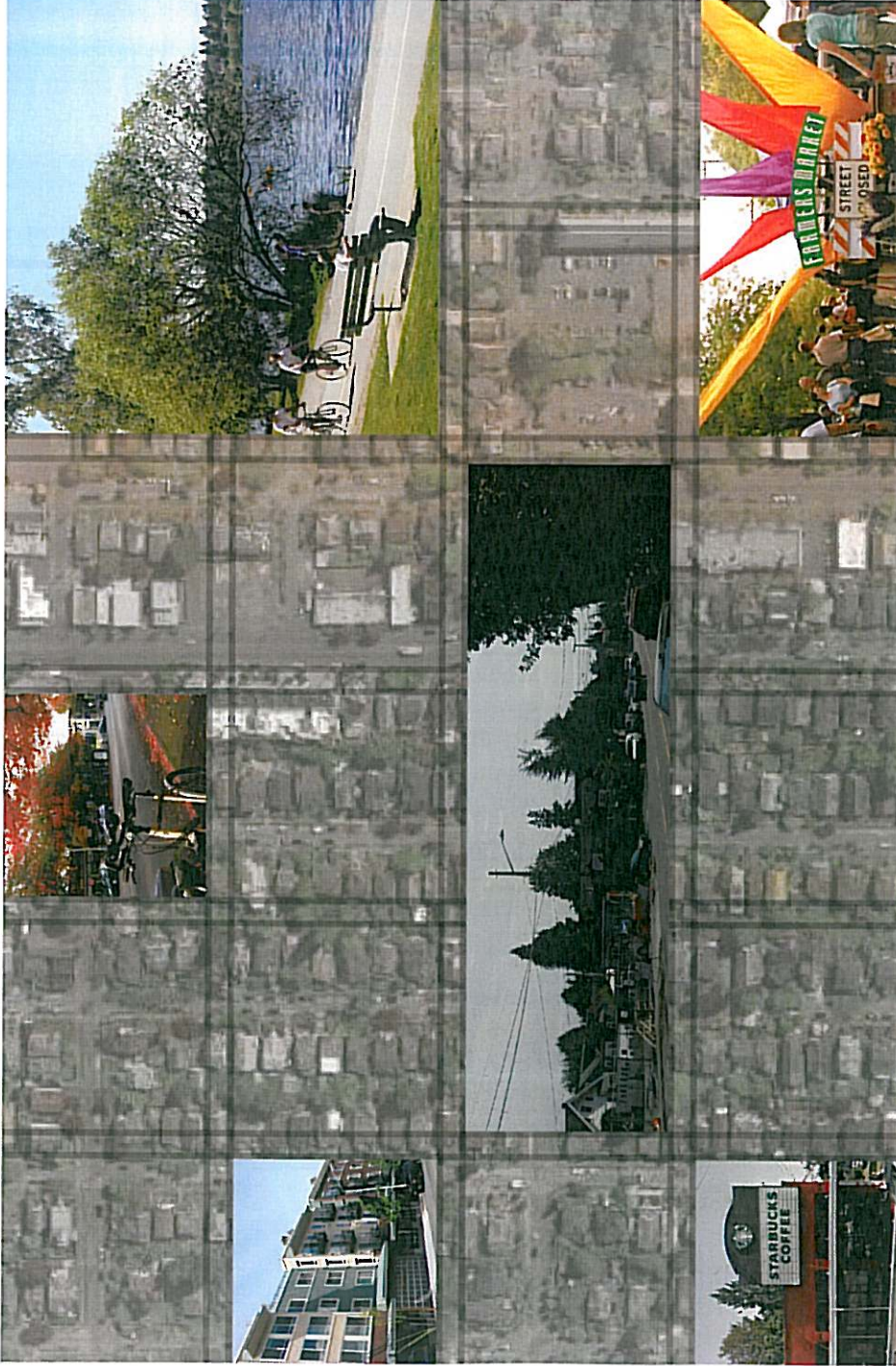
# Response to Guidelines: MUP Application for Design Review

**(Attach additional sheets as needed)**

1. Please describe the proposal in detail, including types of uses; size of structure(s), location of structure(s), amount, location and access to parking; special design treatment of any particular physical site features (e.g., vegetation, watercourses, slopes), etc.
  
  
  
  
  
  
  
  
  
  
2. Please indicate in text and on plans any specific requests for development standard departures, including specific rationale(s) and a quantitative comparison to a code-complying scheme. Include in the MUP plan set initial design response drawings with at least four (4) colored and shadowed elevation drawings and site/landscape plan.
  
  
  
  
  
  
  
  
  
  
3. Please describe how the proposed design responds to the early design guidance provided by the Design Review Board.

# Attachment 7





JOHNSON CARR LLC.

skidmore  
jordan  
jordan  
architects

6726 GREENWOOD AVE N

Early Design Guidance  
09/03/2015 DRAFT # 3020114

DRAFT