

RECEIVED BY
2012 MAY 22 PM 3:44

OFFICE OF
HEARING EXAMINER

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

DAVID D. MILLER

of a Grant – Short Subdivision issued by the
Director, Department of Planning and
Development

CASE NO. MUP 12-014 (W)

DECLARATION OF JESSICA M.
CLAWSON

I, JESSICA M. CLAWSON, under penalty of perjury under the laws of the state of
Washington, declare as follows:

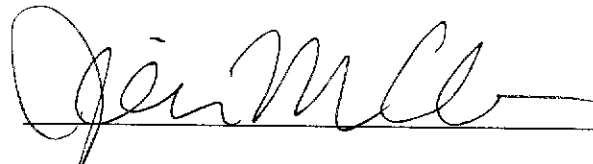
1. I am an attorney with McCullough Hill Leary, P.S., attorneys for PRESCOTT DEVELOPMENT LLC, Applicants in this matter. I am competent to testify and make this declaration based on my personal knowledge.
2. Attached to this Declaration are true and correct copies of the following documents related to this appeal:
 - a. Exhibit A: Department of Planning and Development Permit (“DPD”) # 6257818 establishing use at Prescott Development LLC Project site as townhomes and approving construction of four townhomes issued September 16, 2011.
 - b. Exhibit B: David Miller Appeal Form appealing DPD Permit # 62557818 dated September 29, 2011.
 - c. Exhibit C: David Miller Letter of Support regarding Appeal of DPD Permit # 62557818 dated September 29, 2011.

1 d. Exhibit D: Hearing Examiner letter dismissing David Miller's Appeal of
2 DPD Permit # 62557818 for lack of jurisdiction dated October 4, 2011.

3 I declare under penalty of perjury under the laws of the state of Washington that the
4 foregoing is true and correct.

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6 DATED this 12nd day of May, 2012 at Seattle, Washington.

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10 By:



11 Jessica M. Clawson
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Exhibit A

Project # 6257818

Address	1401 NE 86th St	Permit Number	6257818
Location		Permit Status	Permit Issued
Records Filed At	1401 NE 86th St	Application Date	Aug 13, 2010
Application Type / Action Type	CONSTRUCTION / NEW CONSTRUCTION	Issue Date	Sep 16, 2011
Work Type	FULL REVIEW (COMPLEX)	Expiration Date	Mar 16, 2013
Category	MULTIFAMILY	Finalized Date	
King Co. Assessor's #	510040-0000	Applicant	SCOTT BREWER 2821 NORTHUP WAY SUITE 115 BELLEVUE, WA 98004
Zone/Overlays and ECA	LR2, ARTERL, OVERNG, SALMON, SP GRD	Contractor	PRESCOTT HOMES INC 10613 NE 38TH PL #17 KIRKLAND, WA 98033
Legal Description	PARCEL A, LBA #3011068	GENERAL CONTRACTOR LICENSE:	PRESCI9820W
Description of Work	Establish use as townhomes and construct new 4-unit townhouses with surface parking, per plan.	Permit Remarks	PASV conducted under project number 3011068 on 02-01-10.

Occupancy	OCCUPANCY (NO C OF O)	Ground Disturbance	YES
TRA0 Applies	NO	PASV Required	NO
Building Code	SRC 2006	PASV Completed	3011068
Special Inspections	NO	Substantial Alteration	NO
Phased	NO	Special Flags	

Preliminary Assessment Status <i>(Data prior to July 2008 is not currently available online)</i>	
Status	Deleted
Department Assignment	Current Assignment Report Available Upon Completion

Intake Valuation		Issuance Valuation	
Alteration	\$0.00	Alteration	\$0.00
New	\$415,476.00	New Calculated	\$415,476.00
		New Other	\$0.00
Declared Value	\$415,476.00	Actual Value	\$415,476.00

Project # 6257818

Inspections

Required Inspections - Not Yet Scheduled

Type *			Comments
FINAL			
FOUNDATION			
SET BACK			
SITE FINAL			

Required Inspections - Scheduled

Type *	Date *	Inspector	Comments
FIRST GRND	Nov 02, 2011	WILSONKH	<p>11/07/2011 WEBUSR Contact : David 425-736-1547 Provide Engineers letter for partial wall inspection performed on 11/8/11. 11/08/2011 WEBUSR Contact : David 425-736-1547 12/12/11 KHW Site in compliance at this time. Could you call 30 mins prior? 12/14/2011 WEBUSR Contact : David Uphus. 425-736-1547 Kathleen is currently working with Engineer so she is allowing inspections. This inspection if for the Party wall shear inspection. Jim, Framers will be onsite. Thank you 12/21/2011 WEBUSR Contact : David Uphus 425-736-1547 This is for 2nd floor party wall inspection 01/02/2012 WEBUSR Contact : David Uphus 425-736-1547 If you could call 60-mins prior would be appreciated. Thank you!! Park in back or in front whichever works for you. 02/22/2012 WEBUSR Contact : David Uphus If you could call 60-mins prior would be appreciated. Thank you!! Park in back or in front whichever works for you. 02/22/2012 WEBUSR Contact : David Uphus If Possible and you have time please call 1/2 hr prior to inspection. Thanks again! 03/26/2012 WEBUSR Contact : David 425-736-1547 If Possible and you have time please call 1/2 hr prior to inspection. Also something happened with the online inspection and it said I scheduled a foundation inspection, please cancel that. I only want a framing inspection. Thanks again! 03/26/2012 WEBUSR Contact : David 425-736-1547 If Possible and you have time please call 1/2 hr prior to inspection. Also something happened with the online inspection and it said I scheduled a foundation inspection, please cancel that. I only want a framing inspection. Thanks again! 03/26/2012 WEBUSR Contact : David 425-736-1547 This is for a re-called framing inspection 04/06/2012 WEBUSR Contact : David Uphus 425-736-1547 This is for a re-called framing inspection 04/06/2012 WEBUSR Contact : David Uphus 425-736-1547 If I am not onsite the units will be unlocked and the plans and permit will be in Unit A 04/11/2012 WEBUSR Contact : David Uphus 425-736-1547 If I am not onsite the units will be unlocked and the plans and permit will be in Unit A 04/11/2012 WEBUSR Contact : David Uphus 425-736-1547 this is for partywall shear inspection prior to drywall 04/13/2012 WEBUSR Contact : David 425-736-1547 this is for partywall shear inspection prior to drywall 04/13/2012 WEBUSR Contact : David 425-736-1547</p>
FOUNDATION	Dec 15, 2011	OLSEN	12/14/2011 WEBUSR Contact : David Uphus. 425-736-1547
STRUCTURAL	Dec 23, 2011	LUNDE	12/21/2011 WEBUSR Contact : David Uphus 425-736-1547 12/21/11 CEB: Per customer request, David @

Type *	Date *	Inspector	Comments
			425-736-1547, changed the inspection date from 12/22/11 to 12/23/11
TESC	Jan 26, 2012	WILSONKH	
FOUNDATION	Mar 27, 2012	OLSEN	03/26/2012 WEBUSR Contact : David 425-736-1547

Completed Inspections

(Multiple same-type inspections may be required to complete a project)

Type *	Date *	Result	Inspector	Comments
FIRST GRND	Nov 02, 2011	Partial Pass	WILSONKH	11/01/2011 WEBUSR Contact : David Uphus 425-736-1547 11/02/11 KHW OwnerContractor needs to provide an approved GSI calculation sheet showing GSI elements and calculations. Contractor familiar with Street Use and Side Sewer permitting, and erosion control concerns.
FOUNDATION	Nov 02, 2011	Passed	OLSEN	11/01/2011 WEBUSR Contact : David Uphus 425-736-1547 11/3/2011 jnl - building corners by survey
FOUNDATION	Nov 08, 2011	Partial Pass	OLSEN	11/07/2011 WEBUSR Contact : David 425-736-1547
ADVISORY	Nov 09, 2011	Passed	OLSEN	11/10/11 CEB: Foundation inspection canceled; Advisory inspection done instead. NEED: 8-1/2 x 11 stamped letter addressing hold-down bolt sizes and minimum 1 (single) pour imbedment for these bolts
FOUNDATION	Nov 09, 2011	Canceled	OLSEN	11/08/2011 WEBUSR Contact : David 425-736-1547 11/10/11 CEB: Foundation inspection canceled; Advisory inspection done instead. NEED: 8-1/2 x 11 stamped letter addressing hold-down bolt sizes and minimum 1 (single) pour imbedment for these bolts
TESC	Dec 12, 2011	Partial Pass	WILSONKH	12/12/11 KHW Site in compliance at this time.
INSULATION	Dec 15, 2011	Passed	OLSEN	
FRAMING	Dec 23, 2011	Partial Pass	LUNDE	12/27/11 CEB: Walls - OK to install party walls (unit separation)
FRAMING	Jan 03, 2012	Passed	OLSEN	1/4/12 jnl - 2 - 1hr walls @ 2nd floor
STRUCTURAL	Feb 23, 2012	Partial Pass	OLSEN	02/22/2012 WEBUSR Contact : David Uphus
FRAMING	Mar 27, 2012	Failed	OLSEN	03/26/2012 WEBUSR Contact : David 425-736-1547
FRAMING	Apr 06, 2012	Passed	WHITEDO	04/06/2012 WEBUSR Contact : David Uphus 425-736-1547
INSULATION	Apr 12, 2012	Passed	ANDERSDD	04/11/2012 WEBUSR Contact : David Uphus 425-736-1547
STRUCTURAL	Apr 16, 2012	Passed	LUNDEL	04/13/2012 WEBUSR Contact : David 425-736-1547

Waived Inspections

Type *	Date *	Result	Inspector	Comments
None				

Definition of Terms

ADVISORY : An advisory inspection provides information only.

FINAL	A final inspection is provided to verify that a completed project conforms to code requirements.
FIRST GRND	A first ground disturbance inspection is provided to verify conformance with code requirements when earth is moved.
FOUNDATION	A foundation inspection is provided to verify that a structure's underlying support conforms to code requirements.
FRAMING	A framing inspection is provided to verify that a structure's assembly conforms to code requirements.
INSULATION	An insulation inspection is provided to verify conformance to code requirements before covering walls, ceilings, floors or underground.
PARTIAL PASS	Area of work inspected passed and additional inspections of this type are required - move ahead with corrections/conditions
SET BACK	A set back inspection is provided to verify an installation's location.
SITE FINAL	A site final inspection is provided to verify that the completed work conforms to code requirements.
SITE FINAL	A site final inspection is provided to verify that the completed work conforms to code requirements.
STRUCTURAL	A structural inspection is provided to verify lateral and uplift restraint, diaphragm and other structural code requirements.
TESC	A temporary erosion and sediment control monitoring inspection is provided when earth is moved to verify conformance with code requirements.

Project # 6257818
Reviews

Review Cycles

Review Type	Cycle #	Status	Assignment Date	Complete Date	Assigned To
ADDRESSING	1	Conditional Approval	Aug 13, 2010	Aug 13, 2010	
ADDRESSING	2	Approved	Aug 13, 2010	Aug 13, 2010	
DRAINAGE	1	Corrections Required	Aug 18, 2010	Aug 30, 2010	Donnelly, K.
DRAINAGE	2	Conditional Approval	Nov 29, 2010	Dec 13, 2010	Donnelly, K.
DRAINAGE	3	Approved	Nov 29, 2010	Dec 13, 2010	Donnelly, K.
ORD STRUCT	1	Corrections Required	Aug 31, 2010	Sep 16, 2010	Chang, P.
ORD STRUCT	2	Conditional Approval	Nov 29, 2010	Dec 10, 2010	Chang, P.
ORD STRUCT	3	Approved	Nov 29, 2010	Dec 10, 2010	Chang, P.
WATER	1	Approved	Aug 13, 2010	Aug 17, 2010	
ZONING	1	Corrections Required	Aug 13, 2010	Aug 30, 2010	King, L.
ZONING	2	Corrections Required	Nov 29, 2010	Dec 08, 2010	King, L.
ZONING	3	Approved	Mar 01, 2011	Mar 09, 2011	King, L.

Once all reviews have been completed and approved, the project will undergo a final review, plan preparation and fee calculation prior to issuance. The target timeframe for completing these steps is 3 business days for final review and 3 business days for preparation. Plans Routing will notify you when the project is ready to pick up.

Definition of Terms

- Incomplete Either no one has been assigned to do this review or the assigned reviewer hasn't had a chance to complete the review yet. At this time, it is not determined if there will be corrections.
- Conditional Approval The reviewer has approved the review cycle, but certain conditions must be met before a status of 'Approved' can be reached.
- Corrections Required The reviewer has completed the review but corrections are required. **Plans are released when all reviews in the cycle are complete. Plans Routing will notify you when plans are ready to be picked up.**
- Approved The reviewer has approved the review and no corrections are required. **Please note: once the final review is approved the plans must be processed for issuance. Please allow at least three(3) business days for preparation. Plans Routing will notify you when the permit is ready for pick up.**
- Target Date "Target Dates" represent the "Measured Performance Goal" for completion of DPD Plan Reviews. "Target Dates" are identified for each project based upon: 1) the complexity of the project; as well as, 2) the current review cycle (i.e. Initial Plan Review, Corrections Review, etc.). **(Target dates are not necessarily the "actual" date that all reviews will be completed.)** Please refer to the message posted at the top of this page for demand-based time lines and/or contact Plans Routing (i.e. the Routing Coordinator) for a more accurate estimate based upon current workloads.

Project # 6257818

Fees & Receipts

Go to *Not all fees are eligible for online payment

Fees All fees are subject to change until permit is ready to issue. Final fees are established at issuance.

Date Paid	Status	Description	Fee	Quantity	Amount	Paid
09/16/11	Paid	SITE INSPECT POST ISSUE -MINIMUM (ISSUE)	\$166.00	3	\$498.00	\$498.00
09/16/11	Paid	GEOTECH AND/OR DRAINAGE REVIEW - MINIMUM	\$166.00	1	\$166.00	\$166.00
09/16/11	Paid	RECORDING	\$65.00	1	\$65.00	\$65.00
09/16/11	Paid	STATE SURCHARGE	\$10.50	1	\$10.50	\$10.50
08/13/10	Paid	VALUE BASED - PLAN REVIEW (INTAKE)	\$2,722.00	1	\$2,722.00	\$2,722.00
09/16/11	Paid	GEOTECH AND/OR DRAINAGE REVIEW - MINIMUM	\$166.00	1	\$166.00	\$166.00
09/16/11	Paid	VALUE BASED - PERMIT (ISSUANCE)	\$1,361.00	1	\$1,361.00	\$1,361.00
08/13/10	Paid	VALUE BASED - PERMIT (INTAKE)	\$1,361.00	1	\$1,361.00	\$1,361.00
09/16/11	Paid	MAIL OUT	\$45.00	1	\$45.00	\$45.00
Total Amount					\$6,394.50	\$6,394.50

Project # 6257818

Occupancy & Uses

Building ID	4 UNIT TOWNHOUSE (1401-1407)	Total Units For This Building	4
Stories Above Grade Plane	3	Mezzanines	0
Stories Below Grade Plane	0	High Rise Building	NO

Occupancy

Floors/Area	Group	Occupancy/Use	Sprinkler Standard	Const Type	Assembly Load	Sq Ft	Non-Separated Group	Comments
All	R-3 TOWNHOUSE		NONE	VB	0	3852	Y	

Dwelling Units

Type	Units Removed	Units Added	Comments
MF GRD TOWN	0	4	

Approved Uses

Location	Approved Uses	Sq Ft	Comments
	MULTIFAMILY STR	0	

Project # 6257818

Contacts

Project Contacts

Name	Primary	Capacity
SCOTT BREWER 2821 NORTHUP WAY SUITE 115 BELLEVUE, WA 98004	YES	Applicant
SCOTT BREWER 2821 NORTHUP WAY SUITE 115 BELLEVUE, WA 98004	NO	
CARL POLLARD PRESCOTT HOMES, INC 2821 NORTHUP WAY SUITE 115 BELLEVUE, WA 98004	NO	Financially Responsible Party
PRESCOTT HOMES INC 10613 NE 38TH PL #17 KIRKLAND, WA 98033	NO	Contractor

Exhibit B

LAND USE/SEPA DECISION APPEAL FORM

RECEIVED B
2011 SEP 30 AM 9:
OFFICE OF
HEARING EXAMINER

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach the Office of Hearing Examiner, no later than 5:00 p.m. of the last day of the appeal period.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.

Name Maple Leaf Community Council Executive Board
Address PO Box 75595, Seattle, WA 98175
Phone: Work: n/a Home: n/a
Fax: n/a Email Address: MLCC@MapleLeafCommunity.org

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.

Name David Miller, Chair, Land Use & Transportation Subcommittee
Address PO Box 75595, Seattle, WA 98175
Phone: Work: _____ Home: 206-517-5520
Fax: n/a Email Address: David.Miller@MapleLeafCommunity.org

DECISION BEING APPEALED

- 1. Decision appealed (Indicate MUP #, Interpretation #, etc.): 6257818
- 2. Property address of decision being appealed: 1401 NE 86th St
- 3. Elements of decision being appealed. Check one or more as appropriate:
 Adequacy of conditions _____ Variance
 Design Review and Departure _____ Adequacy of EIS
_____ Conditional Use _____ Interpretation (See SMC 23.88.020)
 EIS not required _____ Short Plat
_____ Major Institution Master Plan _____ Rezone
 Other (specify: No SEPA review)

APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. What is your interest in this decision? (State how you are affected by it)
The Maple Leaf Community Council Executive Board is elected to represent the nearly 4,000
homes and businesses located in the Maple Leaf neighborhood of North Seattle. The piecemeal
permitting of this development has allowed it to escape design review, SEPA review, and
caused potential significant adverse environmental harm in our neighborhood
2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)
(see attached)

3. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

Order SEPA review, design review, impose study and mitigations to address the
potential significant environmental harms, as well as other appropriate remedies and actions.

Signature



David Miller
2011.09.29 23:42:23 -07'00'

Date

September 29, 2011

Appellant or Authorized Representative

David D Miller, Chair, Maple Leaf Community Council Exec Board
Land Use and Transportation Subcommittee

Deliver or mail appeal and appeal fee to:

City of Seattle
OFFICE OF HEARING EXAMINER
P.O. Box 94729
Seattle WA 98124-4729

SEATTLE MUNICIPAL TOWER - 700 5th Avenue, Suite 4000
Phone: (206) 684-0521 Fax: (206) 684-0536
www.seattle.gov/examiner

Exhibit C

September 29, 2011

City of Seattle
Office of the Hearing Examiner
PO Box 94729
Seattle, WA 98124-4729

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2011 SEP 30 AM 9:27

OFFICE OF
HEARING EXAMINER



PO Box 75595
Seattle, WA 98175
mapleleafcommunity.org

Dear Hearing Examiner:

The Maple Leaf Community Council is appealing the Department of Planning and Development's (DPD's) granting of permit 6257818 for building of four units at 1401 NE 86th Street.

Project 6262346 involves the demolition of a storage shed and a former incinerator. Detailed environmental work was done on the storage incinerator as part of the proposed Waldo Hospital (project 300613). The incinerator was found to contain cancer-causing heavy metals and other regulated toxic substances. There appears to be no adequate demolition plan for permit 6262346. We remind you that Judge Brad Thompson remanded a DPD decision for land use of this property because of insufficient controls on toxic dust from demolition. A private school is less than 50 feet away from this building.

Project 6252295, 6252301, and 6257818 involve the building of nine townhome units in multiple structures. The construction of nine townhomes should trigger SEPA and Design Review. It appears these projects were piecemealed (also referred to as micropermitting) to avoid this review in violation of the SEPA rules (SMC 25.05.305). We request these projects undergo SEPA review and Design Review before additional work is done.

Briefly, DPD allowed micropermitting/piecemealing in violation of City and State law by allowing the developer to split a 9-unit L2 project into two permits despite the project being physically co-located and functionally related. The impact of not going through SEPA review was the violation of a King County Superior Court order requiring DPD to create a better plan for demolition of buildings on the site. As a direct result of DPD's error, the developer demolished a building containing carcinogenic heavy metals with no control over the spread of the toxic material. This demolition occurred while children were present on the playground of the adjacent school.

This project is not exempt from SEPA. Permits issued without SEPA review were done so by DPD in error and in violation of RCW and SMC. This is an issue of micropermitting, which is against the law. Were it not for DPD allowing the developer to piecemeal the projects, this development would be subject to SEPA and Design Review. Such evasion is not permissible.

SMC 25.05.305.A.2.b provides the relevant language, we've provided the emphasis:

A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction. If so, that agency shall be the lead agency, unless the agencies with jurisdiction agree that another agency should be the lead agency. Agencies may petition the Department of Ecology to resolve disputes (Section 25.05.946), or may petition the Mayor to resolve disputes between City agencies (Section 25.05.910).

This is perhaps more clear from WAC 197.11.60.3.b referring to the content of environmental review:

(b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document.

WAC 197.11.60.3.c.i provides clarity on the definition of "related" or "similar" projects:

(i) Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects that provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography.

DPD's actions violate the letter and intent of City and State law governing SEPA and Design Review for a number of reasons:

- (1) In this case, King County Superior Court Judge Timothy Bradshaw told DPD demolition on the site had a probable significant adverse environmental impact (Maple Leaf Community Council vs. City of Seattle and Prescott Development, 2009, attached). This sets a fixed threshold for the potential of significant adverse environmental impact that DPD willfully ignored in issuing these permits. A SEPA review must be done before DPD can declare no environmental harm exists. It cannot be assumed prior to even a SEPA checklist being completed, especially in light of Judge Bradshaw's prior decision, no environmental harm exists.
- (2) The was always intended to be a 9-unit project. According to documents obtained during a Public Disclosure Request, the developer submitted the project initially as a 9-unit project (see attached). It was only when the project reached the permitting stage that it was improperly and illegally piecemealed to avoid SEPA review and Design Review.
- (3) In this case, the developments are physically right next to each other. We note the code says "...functionally OR physically..." related. There is no requirement they be functionally related. DPD cannot simply choose to enforce "functionally" and not "physically".
- (4) The developments are also functionally related. Development of project 6257818 functionally depends upon the prior development's creation of a driveway. Were it not for this functional relationship, owners of the four units proposed under this permit would have no way to access the required parking and units.
- (5) The City of Seattle defines any L2 development larger than eight units as de facto requiring SEPA review. DPD may decide AFTER a threshold review there are no significant adverse impacts needing mitigation, but you do not have the option or authority under the SMC to allow a piecemealing to escape review.
- (6) The City of Seattle defines any L2 development larger than eight units as de facto requiring Design Review. This nine-unit project was not subjected to the Design Review Process

We believe the Hearing Examiner should remand this permit to DPD and conduct a full SEPA and Design Review of this project taking into consideration all nine units constructed.

Sincerely,



David D. Miller
Chair

Maple Leaf Community Council Land Use and Transportation Subcommittee

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IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

MAPLE LEAF COMMUNITY COUNCIL
EXECUTIVE BOARD,

Petitioner,

v.

CITY OF SEATTLE, PRESCOTT
DEVELOPMENT, LLC, AND CAMP FIRE
USA PUGET SOUND,

Respondents.

No. 08-2-32517-2 SEA

ORDER ON LAND USE PETITION

This matter came before the above entitled Court on a Land Use Petition Act appeal filed by Petitioner pursuant to chapter 36.70C RCW. The Court heard the oral arguments of counsel for Petitioner and for the Respondents, read all pleadings filed in this matter, reviewed the administrative record of proceedings with exhibits, the Hearing Examiner's decision, and the applicable law at issue and on point.

The standard of review for this action requires a reviewing court to accord substantial weight to the Hearing Examiner's decision. The Petitioner carries the burden of proof and the court may reverse the decision only if it finds the decision clearly erroneous. *Isla Verde Int'l v.*

ORDER AND JUDGMENT

Page 1 of 3

KING COUNTY SUPERIOR COURT
516 Third Avenue
Seattle, WA 98104

1 *City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002); *Boehm v. City of Vancouver*, 111 Wn.App.
 2 711, 47 P.3d 137 (2002). The evidence is to be reviewed "in the light most favorable to the party
 3 that prevailed at the highest forum exercising fact-finding authority." *Schofield v. Spokane*
 4 *County*, 96 Wn. App. 581, 980 P.2d 277 (1999). Finally, this Court may not substitute its
 5 judgment for that of Hearing Examiner Watanabe. *Association of Rural Residents v. Kitsap Cty.*
 6 141 Wn.2d 185 (2000).

8 The Court hereby finds that it cannot conclude that substantial affirmative evidence
 9 establishes that the decision of the Hearing Examiner was clearly erroneous. Accordingly,
 10 pursuant RCW 36.70C.130, the Petition may not be granted. Additionally, it is clear that several
 11 design review conditions were imposed and are required.¹

14 It is hereby ORDERED, ADJUDGED, and DECREED that the Hearing Examiner's
 15 decision approving the draft plan at issue is upheld, and Petitioner's Land Use Petition Act
 16 appeal is dismissed. FURTHER, pursuant RCW 36.70C.140, the Court REMANDS with
 17 direction to the Hearing Examiner to fully consider the additional condition of a "circus tent"
 18 enclosure² in any final plan.

25 ¹ (1) a stop sign, (2) pavement treatment, and (3) sight triangles at the parking garage exit, along with (4) the
 26 prohibition on gates in arbors and (5) departures for required open space.

27 ² As argued by Petitioner, the circus tent would provide "certain protection from the significant environmental harm"
 28 to the community. Sr. Land Planner Kemp acknowledged this point in testifying about a circus tent condition. (pp
 40-41). Full mitigation is appropriate given the proximity of the site to the Maple Leaf Reservoir.

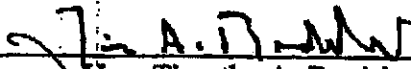
ORDER AND JUDGMENT

Page 2 of 3

KING COUNTY SUPERIOR COURT
 516 Third Avenue
 Seattle, WA 98104

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Entered on this 29th day of May, 2009



Hon. Timothy A. Bradshaw

ORDER AND JUDGMENT

Page 3 of 3

KING COUNTY SUPERIOR COURT
516 Third Avenue
Seattle, WA 98104

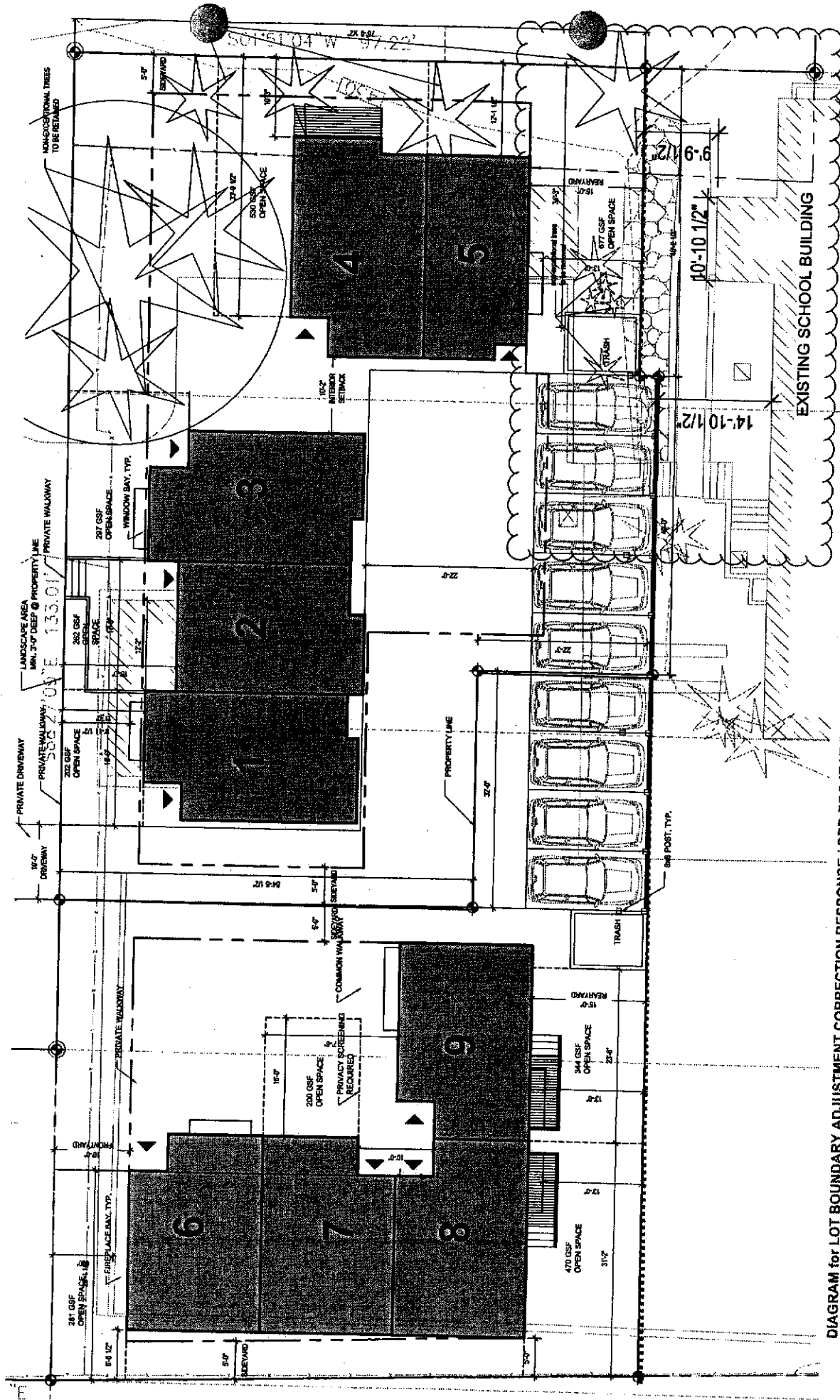


DIAGRAM for LOT BOUNDARY ADJUSTMENT CORRECTION RESPONSE / DPD PROJECT #3011068

MAPLE LEAF TOWNHOMES

DPD #3030000

SITE PLAN

SCALE: NTS

06.07.2010

SEATTLE.GOV City Services Departments Staff Directory About Seattle City Contacts



SEARCH: Go

Department of Planning and Development

Home About Us Contact Us

Shaping and protecting Seattle's built and natural environment

Diane Sugimura, Director

Permit & Complaint Status

Project # 6257818

Find Another Project Printable Version

Address	1401 NE 86th St	Permit Number	6257818
Location		Permit Status	Permit Issued
Records Filed At	1401 NE 86th St	Application Date	Aug 13, 2010
Application Type / Action Type	CONSTRUCTION / NEW CONSTRUCTION	Issue Date	Sep 16, 2011
Work Type	FULL REVIEW (COMPLEX)	Expiration Date	Mar 16, 2013
Category	MULTIFAMILY	Final Date	
King Co. Assessor's #	510040-0000	Applicant	SCOTT BREWER 10613 NE 38TH PL STE 17 KIRKLAND, WA 98033
Zone/Overlays and ECA	LR2, ARTERL, OVERNG, SALMON, SP GRD	Contractor	PRESCOTT HOMES INC 10613 NE 38TH PL #17 KIRKLAND, WA 98033
Legal Description	PARCEL A, LBA #3011068	GENERAL CONTRACTOR LICENSE:	PRESCI982OW
Description of Work	Establish use as townhomes and construct new 4-unit townhouses with surface parking, per plan.	Permit Remarks	PASV conducted under project number 3011068 on 02-01-10.

Details Inspections Reviews Land Use Fees & Receipts Occupancy & Uses Contacts

Occupancy	OCCUPANCY (NO C OF O)	Ground Disturbance	YES
TRAO Applies	NO	PASV Required	NO
Building Code	SRC 2006	PASV Completed	3011068
Special Inspections	NO	Substantial Alteration	NO
Phased	NO	Special Flags	

Preliminary Assessment Status (Data prior to July 2008 is not currently available online)

Status	Deleted	Current Assignment	
Department Assignment		Report Available Upon Completion	

Intake Valuation		Issuance Valuation	
Alteration	\$0.00	Alteration	\$0.00
New	\$415,476.00	New Calculated	\$415,476.00
		New Other	\$0.00
Declared Value	\$415,476.00	Actual Value	\$415,476.00

Department of Planning and Development (DPD)

Exhibit D



City of Seattle

Office of Hearing Examiner

Sue A. Tanner, Hearing Examiner
Anne Watanabe, Deputy Hearing Examiner

October 4, 2011

David Miller, Chair
Land Use & Transportation Subcommittee
PO Box 75595
Seattle WA 98175

Dear Mr. Miller:

Your letter seeking to appeal the decision by the Director of the Department of Planning Development granting permit 6257818 was received in our office on September 30, 2011. The permit is to establish a use as townhomes and to construct new four-unit townhomes with surface parking at 1401 NE 86th Street.

The Hearing Examiner may hear appeals only if jurisdiction to do so is granted by the Seattle Municipal Code. SMC 23.76.004 provides that a permit to establish a use permitted in the zone is a Type I permit that cannot be appealed to the Hearing Examiner. Your appeal states that the Director is allowing a 9-unit townhome development by processing it under three different permits. You allege that this process constitutes "piecemealing" the project to avoid required review under the State Environmental Policy Act (SEPA). SMC 23.76.004 authorizes the Hearing Examiner to consider appeals of four types of environmental determinations, but the decision you seek to appeal is not among them. (See Table A for 23.76.004.) An attorney could advise you on whether there are appeal options outside the administrative process.

Because the Hearing Examiner lacks jurisdiction to consider your appeal, we are returning the \$50.00 appeal fee you submitted.

Sincerely

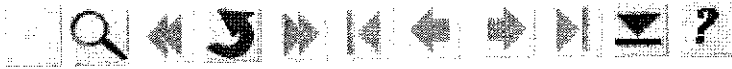
A handwritten signature in cursive script that reads "Sue A. Tanner".

Sue A. Tanner
Hearing Examiner

cc: Bruce Rips, DPD
Jerry Suder, DPD

Exhibit E

- [Election Code Administration](#)
- [Seattle Hearing Examiner](#)
- [Business Tax Rules](#)
- [Taxicab and For-Hire Vehicles](#)
- [Public Corporations](#)



City of Seattle Hearing Examiner Decision

Information retrieved May 22, 2012 9:58 AM

Before the Hearing Examiner City of Seattle

In the Matter of the Appeal of **SEATTLE CHINESE CHAMBER OF COMMERCE** From a Certificate of Approval issued by the Director, Department of Neighborhoods ..DTYP: Special Districts, Dispositive Order

Hearing Examiner File: R-04-004

Date: August 20, 2004

Type: Landmarks and Special Districts

Examiner: Anne Watanabe

ORDER ON MOTION FOR SUMMARY JUDGMENT

1. The Director of the Department of Neighborhoods moved for summary judgment in this appeal. The appellant filed a reply brief, and oral arguments were heard before the undersigned Deputy Hearing Examiner on August 18, 2004. Represented at the hearing were: the appellant, Seattle Chinese Chamber of Commerce, by Stephen J. Crane, attorney at law; and the Director, Department of Neighborhoods (Director), by Roger D. Wynne, Assistant City Attorney. All pleadings and supporting documents submitted by the parties, including those submitted following the hearing, were reviewed prior to entry of this order.
2. Summary judgment is to be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law; on a motion for summary judgment, all facts and all reasonable inferences from the facts are to be viewed in the light most favorable to the nonmoving party. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.2d 446 (2001). Summary judgment is appropriate if the evidence, viewed in the nonmoving party's favor, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id.* Under Hearing Examiner Rule 3.02, an appeal shall be dismissed where the Examiner lacks jurisdiction to grant relief or the appeal is without merit on its face. Under SMC 23.66.030.E, the Hearing Examiner may reverse or modify the Director's decision on a certificate of approval only if that decision is arbitrary and capricious.
3. The motion alleges that the Director is entitled to judgment as a matter of law on all seven of the claims raised by the appellant. For the reasons stated below, the Department's motion is granted and the appeal must therefore be dismissed.
4. Compliance with SMC 23.66.338. The appellant alleges that the decision does not comply with SMC 23.66.338, because the proposed sign is not "in keeping with the Asian character of the area." But SMC 23.66.338's scope is much narrower than that argued by the appellant. The section provides that sign controls are to be applied "to ensure that scale, shape color and type of signs" are in keeping with the Asian character of the area. Thus, the words "Asian character" must be read with reference to the scale, shape, color, size and other design features of a proposed sign. Subsection G.1, the actual criteria for approval of signs, further states that "The overall design of a sign including size, shape, texture, method of attachment, color and lighting" are to be compatible with the use, the building's architecture, and the District.
5. The appellant has not raised objections to the proposed sign's size, shape, texture, method of attachment, color, lighting or any other design element. The appellant objects solely to the sign's content, i.e., the order of the words that would appear on the sign. But SMC 23.66.338 does not authorize the Director to approve or disapprove a certificate of approval for a sign based on the order in which the words appear, and as a matter of law, no relief could be granted to the appellant on this claim.

6. Compliance with SMC 23.66.030.D (and SMC 23.66.316). The appellant alleges that the decision does not comply with SMC 23.66.030.D.2.c. This Code section provides that the Board's recommendation on an application for a certificate of approval is to be based on the consistency of the proposed action with the requirements of the chapter, the district use and development standards, and the purposes for creating the district. SMC 23.66.316 similarly provides that the Board is to make a written recommendation to the Director based upon the extent to which the proposal is consistent with the goals and objectives of the District and the use and development standards of Chapter 23.66.

7. The Director's motion argues that these Code provisions specifically refer to the Board's recommendations, and so the criteria contained in those provisions should not be applied to the Director's decision. But it would seem to render these criteria meaningless if they were not applicable to the decision itself.

8. Nevertheless, assuming that these sections do apply to the Director's decision, (and that they could be applied without being limited to criteria found in SMC 23.66.338.G), the Director's decision is not arbitrary and capricious. As noted above, the proposed sign would not run afoul of any of the use and development standards, and the proposal would thus meet the relevant "requirements" of the chapter.

9. As noted above, SMC 23.66.030.D and 23.66.316 reference the goals and objectives of the International Special Review District and the purposes for which it was created. The goals and objectives of the International Special Review District are stated in SMC 23.66.302, with sections A-G setting out how the goals are to be achieved. Chapter 23.66 consistently refers to the "Asian" character or heritage of the District, and does not reference specific Asian cultures, e.g., Vietnamese or Korean. The Code does not define "Asian" and the dictionary definition found in the American Heritage Dictionary (4th Edition, 2000) simply states: "Of or relating to Asia or its peoples, languages, or cultures. 1. A native or inhabitant of Asia. 2. A person of Asian descent."

10. Chapter 23.66 and the definition of the word "Asian," do not indicate that the character, culture, or other aspects of any specific Asian group must be considered in a certificate of approval decision. Absent any requirement of such consideration, as a matter of law, it was not arbitrary and capricious for the Director to have approved a sign that places the word "Chinatown" after, rather than before, the words "International District."

11. Violation of Policy No 060-P1.4.1. The appellant alleges that the Director's decision violated City policy and procedure, specifically citing Policy No. 060-P1.4.1 regarding the naming of community centers. Policy 060-P1.4.1 was adopted by the Seattle Parks and Recreation Department, and is "to guide the naming of parks and recreation properties facilities." The Policy applies to the Department of Parks and Recreation, the Board of Parks Commissioners, and the City Council Committee "that considers parks and recreation issues" and naming of parks and recreation properties and facilities.

12. By its own terms, the policy is to "guide" the Parks Department in the naming of properties and facilities. But assuming, for the purposes of this motion, that the Parks Department violated its own policy, the policy does not apply to the Department of Neighborhoods or to the Director's decision. There is no reference in Chapter 23.66 to the Parks policy, and there is no other language in Chapter 23.66 that could reasonably be construed to require that this policy be considered or applied to a decision on a certificate of approval. As a matter of law, the Director's failure to consider this policy is not a basis for reversal or remand of her decision.

13. Compliance with Ordinance 119297. The appellant alleges that the decision violates Ordinance 119297. The ordinance amended the Land Use Element "to reflect the name change of the Urban Center Village from International District to Chinatown/International District," and incorporated policies and goals of the Neighborhood Plan.

14. Ordinance 119297 does not purport to regulate signs in the International Special Review District, and that chapter does not reference the ordinance. The provisions of Ordinance 119297, do not, as a matter of law, provide any basis for reversing or remanding the Director's decision here.

15. Appearance of Fairness. The appellant also alleges that the decision violated the appearance of fairness, because of communications and information submitted to the Director concerning the substance of the decision, after the International Special Review District Board had completed its public meetings. The Examiner does not find in SMC 23.66.030.E the authority to enforce the appearance of fairness doctrine as part of an appeal of a certificate of approval, and this claim cannot be considered.

16. Compliance with SEPA. The appellant claims that the decision violates SEPA, because it does not analyze or adequately mitigate impacts of the proposed sign. No SEPA review of the proposal was performed by the Director or by any other City

Department. The certificate of approval was for the installation of a sign, and that action is categorically exempt from SEPA review under SMC 25.05.800. The appellant has argued in its reply brief that the Director should not have considered this proposal to be exempt, because it was part of a series of related exempt and non-exempt actions under SMC 25.05.305. But under SMC 25.05.680, the Examiner's SEPA review authority extends only to a review of a threshold determination or the adequacy of an FEIS. Thus, the Examiner cannot review the Department's decision to treat this proposal as categorically exempt under SEPA.

17. Failure to state the specific basis for "reversal" of Board's recommendation. SMC 23.66.030.D requires that the Board make written recommendations, but the Code does not require that the Director provide a statement explaining the basis for approval. The failure of the Director to provide a more detailed statement as to why she approved the certificate, does not render her decision arbitrary and capricious.

18. The appellant's appeal statements and briefs eloquently describe its objections to the community center name that was selected by the Parks Department nearly two years ago. The appellant clearly desires a forum in which to challenge that name, as a way of preserving recognition for the historical contributions and traditions of the Seattle Chinese community. But no issues of material fact have been presented with regard to the claims raised in this appeal, which is limited to the certificate of approval issued by the Department of Neighborhoods, and the Department is entitled to judgment as a matter of law. There is no basis upon which the Examiner could reverse or remand the decision, and the appeal is hereby dismissed.

