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No. 68538-4-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

**JONATHAN DREZNER, MD, and HEIDI GRAY, MD, husband and
wife,**

Appellants,

vs.

CITY OF SEATTLE

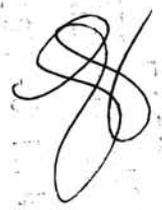
Respondent,

and

**DAN DUFFUS; SOLEIL LLC; SOLEIL HOMES, LLC; and DL
DALTON, LLC,**

Additional Respondents.

**BRIEF OF ADDITIONAL RESPONDENTS DAN DUFFUS, SOLEIL
LLC; SOLEIL HOMES LLC; AND DL DALTON LLC**



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TABLE OF CONTENTS

Page

I. INTRODUCTION1

II. STATEMENT OF FACTS3

 A. The City’s Code-Required Process for Reviewing Applications For Lot Boundary Adjustments and Its Decision to Approve the Duffus Application.3

 B. Appellants Learn of the Duffus LBA and Their Informal Efforts to Learn About Its Status.6

 C. What Appellants Failed To Do.....8

III. ISSUES PRESENTED BY THIS CASE.....9

IV. STANDARD OF REVIEW.....10

V. ARGUMENT11

 A. The City’s Decision Approving the Duffus LBA on November 2 Was the City’s Final Decision For Purposes of LUPA.11

 1. *The City’s Decision approving the Duffus LBA Satisfies LUPA’s Criteria for a Final Land Use Decision and the City Made that Decision as Its Code Required.11*

 2. *THE CITY’S TWO-STEP PROCESS FOR APPROVING LBAs IS CONSISTENT WITH THE PROCESS REQUIRED BY STATUTE FOR SUBDIVISIONS AND THE CITY’S DETERMINATION THAT THE LBA COMPLIED WITH APPLICABLE REGULATIONS COMPLETED THE FIRST STEP IN THAT PROCESS AND WAS ITS FINAL DECISION.14*

3.	<i>THIS COURT SHOULD GIVE GREAT WEIGHT TO THE CITY'S INTERPRETATION OF ITS LAND USE CODE AND ITS DETERMINATION THAT IT MADE ITS FINAL DECISION TO APPROVE THE DUFFUS LBA ON NOVEMBER 2.....</i>	19
B.	Issuance of the City's Final Land Use Decision Triggered the LUPA Limitation Period.	21
C.	Drezner/Gray Did Not Seek Judicial Review of the City's Decision Approving the Duffus LBA Within LUPA's Limitation Period.....	22
D.	The Court Should Affirm the Dismissal of this Case Because It Was Not Timely Filed.....	22
E.	The Alternative Approaches Suggested by Drezner/Gray Are Not Supported by Facts in the Record; Are Not Supported by Legal Authority; and Would Undermine LUPA's Fundamental Purpose.	23
1.	<i>Drezner/Gray's Efforts to Obtain the Information Needed to File a Timely Land Use Petition Were Not Diligent Because They Did Not Take the Simple Steps Prescribed by the City to Obtain Reliable Information.....</i>	24
2.	<i>Drezner/Gray's Suggested "Diligent Attempts" Standard Would Eliminate the Certainty LUPA Now Provides and That is One of Its Fundamental Goals.....</i>	28
3.	<i>No Legal Authority Supports Drezner/Gray's Suggestion that An Interested Party is Entitled to Actual Notice of a Final Land Use Decision.</i>	28
4.	<i>Drezner/Gray's Arguments and Suggested Alternative Approaches are Inconsistent</i>	

*With and Would Frustrate LUPA's
Purpose to Provide Consistent, Predictable,
and Timely Review of Land Use Decisions.....31*

**F. This Case Is Not Appropriate for Equitable
Estoppel and To Apply that Doctrine Here
Would Damage the Rights of Duffus.33**

**G. Duffus Should be Awarded His Attorneys' Fees
and Costs on Appeal.....35**

VI. CONCLUSION36

APPENDICES

TABLE OF AUTHORITIES

	Page
CASES	
<i>Applewood Estates v. City of Richland</i> , 166 Wn. App. 161, 269 P.3d 388 (2012)	24, 32
<i>Asche v. Bloomquist</i> , 132 Wn. App. 784, 133 P.3d 475 (2006)	34
<i>Chelan County v. Nykreim</i> , 146 Wn.2d 904, 52 P.3d 1 (2002)	34, 36
<i>Habitat Watch v. Skagit County</i> , 155 Wn.2d 397, 120 P.3d 56 (2005)	11, 22, 30
<i>Hale v. Island County</i> , 88 Wn. App. 161, 946 P.2d 1192 (1997).....	24
<i>Hama Hama Co. v. Shorelines Hearings Bd.</i> , 85 Wn.2d 441, 536 P.2d 157 (1975)	22
<i>Harrington v. Spokane County</i> , 128 Wn. App. 202, 114 P.3d 1233 (2005)	18
<i>James v. County of Kitsap</i> , 154 Wn.2d 574, 115 P.3d 286 (2005)	34, 36
<i>Lakeside Indus. v. Thurston County</i> , 119 Wn. App. 886, 83 P.3d 433 (2004)	34
<i>Loveless v. Yantis</i> , 82 Wn.2d 754, 513 P.2d 1023 (1973).....	15
<i>Mellish v. Frog Mountain Pet Care</i> , 172 Wn.2d 208, 257 P.3d 641 (2011)	22
<i>Moss v. City of Bellingham</i> , 109 Wn. App. 6, 31 P.3d 703 (2001)	37
<i>Nickum v. City of Bainbridge Island</i> , 153 Wn. App. 366, 223 P.3d 1172 (2008)	31, 32
<i>Samuel's Furniture, Inc. v. Dep't of Ecology</i> , 147 Wn.2d 440, 54 P.3d 1194 (2002)	17, 32

<i>WCHS, Inc. v. City of Lynnwood</i> , 120 Wn. App. 668, 86 P.3d 1169, review denied, 152 Wn.2d 1034 (2004)	19, 20
<i>Wenatchee Sportsmen Ass'n v. Chelan County</i> , 141 Wn.2d 169, 4 P.3d 123 (2000)	11

STATUTES

RCW 36.70C.010	31
RCW 36.70C.020(2).....	11, 12
RCW 36.70C.040(2).....	23
RCW 36.70C.040(3).....	22
RCW 36.70C.040(4).....	12, 21
RCW 36.70C.040(4)(a)	21
RCW 36.70C.130(1).....	10
RCW 36.70C.130(1)(b)	10
RCW 4.84.370	35
RCW ch. 36.70C.....	2
SMC § 23.76.004.....	4
SMC § 23.76.004 B	4
SMC § 23.76.020 C (1)	4
SMC § 23.76.028 A (1)	4
SMC § 3.104.030(A)	25
SMC §23.24.050(A)	15
SMC §23.76.004.....	15
SMC §23.76.020(C)(2)(a)	15

SMC §23.76.020(C)(2)(e)	15
SMC §23.76.022 A (1)	12
SMC ch. 23.20	3, 12

OTHER AUTHORITIES

Black’s Law Dictionary 567 (5th ed. 1979)	16
ROBERT D. JOHNS & DUANA T. KOLOUSKOVÁ, SUBDIVISION OF LAND at § 2.6(1) (WASHINGTON REAL PROPERTY DESKBOOK, Vol. 6, ch. 3, 2012)	15

RULES

CR 6(a)	22
ER 1101(a).....	26
ER 201	26
RAP 18.1	35

I. INTRODUCTION

The City of Seattle approved a lot boundary adjustment (“LBA”) changing the boundaries of two lots. An LBA is classified as a minor land use decision. The City processed the LBA application and issued its decision approving the LBA according to its established procedures.

The City’s land use code authorizes only three methods to divide land—formal subdivisions, short subdivisions, and lot boundary adjustments. State law requires all jurisdictions to use a two-step process for formal subdivisions. The City has adopted this two-step process for short subdivisions and LBAs as well.

The first step in this process is a discretionary decision that determines whether the proposed subdivision complies with land use, zoning, and other requirements. Uniformly, under all three types of land divisions, this is the *land use decision* that triggers subsequent appeals. The second step is a ministerial process where certain clerical functions are completed before recording the land division in the county records. The City’s code provides that the LBA *permit* is issued *after* all these clerical steps have been taken.

State law requires lawsuits challenging a land use decision to be filed within 21 days after that decision is issued. Appellants filed a lawsuit challenging this LBA more than 21 days after the City issued its decision

approving the LBA. To overcome the late filing of the lawsuit, appellants claim the City's decision was not a final decision for purposes of the Land Use Petition Act ("LUPA"), RCW ch. 36.70C. Instead, they claim the issuance of a permit *after* issuance of the decision and *after* completion of ministerial tasks was the final land use decision.

Alternatively, appellants claim their diligent efforts to learn about the City's land use decision were frustrated by seemingly contradictory information they obtained from the City's website and their communications with some City employees who were not involved in approving the LBA.

The City's website, like much of the online world, is fast but not necessarily accurate. The City explicitly warns users of its website not to rely on the information posted there. The communications between some City employees unrelated to the LBA and the appellants' representatives were confusing to those representatives because those representatives

- were not clear about the information they sought,
- assumed information on the website referred to a different type of action than the information actually referred to,
- did not contact the City employee who made the land use decision, and
- did not follow established procedures and examine the project file at the City's Public Resource Center where a copy of the decision was in the file and available for public review.

Had appellants' representatives followed the City's established procedures for obtaining information concerning lot boundary adjustments, they would have seen the land use decision approving the LBA long before the deadline for filing a land use petition had passed. Appellants' failure to take such simple steps was neither diligent nor reasonable and that failure was the reason why their lawsuit was not timely. This court should affirm the trial court's dismissal of this lawsuit as untimely.

II. STATEMENT OF FACTS

A. **The City's Code-Required Process for Reviewing Applications For Lot Boundary Adjustments and Its Decision to Approve the Duffus Application.**

On October 11, 2011 Dan Duffus¹ filed an application with the City of Seattle to modify the boundaries of two parcels of land.² The City authorizes such applications under Subtitle II of its land use code, which governs divisions of land.³ The City refers to this type of land division as a lot boundary adjustment ("LBA").⁴

¹ We refer to the non-city respondents in this case collectively as "Dan Duffus" or "Duffus."

² Declaration of Malli Anderson in Support of Respondent's Motion to Dismiss ("Anderson Declaration"), ¶ 3, CP at 44. That declaration is attached as Appendix A for the Court's convenience because it recounts in chronological order precisely what the City did regarding the Duffus LBA.

³ Table of Contents, Title 23, Subtitle II Platting Requirements, Seattle Municipal Code ("SMC").

⁴ SMC ch. 23.20.

An LBA is classified as a Type I land use decision in the City's land use code.⁵ Type I decisions are made by the Director of the Department of Planning and Development ("DPD"), and "require the exercise of little or no discretion and are not appealable to the Hearing Examiner."⁶ An LBA is approved for issuance "at the time of the Director's decision that the application conforms to all applicable laws."⁷ The City does not give public notice of Type I applications or decisions.⁸

In Client Assistance Memo ("CAM") 213 B the City describes in plain English the LBA approval process established in the City's code.⁹ Regarding DPD's decision, it states: "A letter documenting *the Director's Decision* and outlining the recording process will be sent to the designated contact person."¹⁰ The memo then describes ministerial steps DPD takes after the Director's Decision has been made—the LBA is recorded and then the LBA permit is issued.¹¹

On November 2nd, Malli Anderson, a DPD employee designated by the Director to "make final decisions to approve or deny" applications

⁵ SMC § 23.76.004, Table A.

⁶ SMC § 23.76.004 B.

⁷ SMC § 23.76.028 A (1).

⁸ SMC § 23.76.020 C (1).

⁹ CP at 75-80.

¹⁰ CP at 76 (Emphasis supplied.).

¹¹ *Id.*

for an LBA, approved the Duffus LBA.¹² She documented this decision by letter mailed to the project contact person.¹³ Here is that letter:



City of Seattle
Department of Planning and Development
D. M. Sugimura, Director

Mark Knoll
P.O. Box 99187
Seattle, WA 98139

November 02, 2011

Re: 3012782

Dear Mr. Knoll:

Your Lot Boundary Adjustment has been **APPROVED**. Your initial payment at the time of application covered the first 5 hours of land use review. At this time no additional land use fees are owed.

After submittal of the final documents to DPD, you will be notified by a Routing Coordinator of the project fees owed prior to final sign off by the Department and recording with the King County Assessor's Office. Additional fees owed can be paid online by going to <http://www.seattle.gov/dpd/OnlineServices/> and clicking on "pay permit fees online", or at the PRC on the 20th floor, or by calling the Routing Coordinator assigned to your project.

Instructions for preparing and submitting final recording documents, paying fees, and securing issuance of your LBA permit are attached.

Sincerely,

Malli Anderson
Land Use Planner
(206) 233-3858
Malli.anderson@seattle.gov

Attachment: LBA fee payment and recording instructions
cc: file

Attached to this letter is a two-page Lot Boundary Adjustment Review Checklist. This checklist documents DPD's consideration of the

¹² Anderson Declaration, ¶¶ 3 and 7, CP at 44.

¹³ *Id.*

criteria in the City's land use code that must be satisfied before an LBA can be approved and the six boxes checked off on this list demonstrate DPD's determination that these criteria have been satisfied.¹⁴

On November 2nd, Malli Anderson also placed a copy of the decision in DPD's official project file.¹⁵ The City's project file was available for public view at DPD's Public Resource Center and that file contained a copy of the decision.¹⁶

B. Appellants Learn of the Duffus LBA and Their Informal Efforts to Learn About Its Status.

Appellants Jonathan Drezner and Heidi Gray (collectively referred to as "Drezner/Gray") learned of the Duffus LBA from the City's website on November 13.¹⁷ At that time, Drezner/Gray were plaintiffs in two pending lawsuits against Duffus regarding the use and development of the parcels of land that were the subject of the LBA.¹⁸ That same day Drezner/Gray contacted their attorney in those actions and in this case.¹⁹

Their attorney, Mr. Schneider, recounts a phone conversation regarding the Duffus LBA with DPD employee Andy McKim on Tuesday,

¹⁴ CP at 59-60.

¹⁵ CP at 44.

¹⁶ Declaration of Sue Putnam in Support of Respondent's Motion to Dismiss, ¶ 4, CP at 137.

¹⁷ Declaration of Jonathan Drezner in Opposition to Motion to Dismiss, ¶ 6, CP at 102.

¹⁸ *Id.* at ¶¶ 4 and 5, CP at 101-2.

¹⁹ Declaration of Patrick J. Schneider in Opposition to Motion to Dismiss ("Schneider Declaration"), ¶ 8, CP at 111.

November 15 and cites a contemporaneous email about that conversation from Mr. McKim.²⁰ Mr. Schneider and Mr. McKim had previously been professional colleagues when Mr. Schneider worked at the City Attorney's office.²¹ Other than this, the record does not reflect why Mr. Schneider contacted Mr. McKim and does not reflect any connection between Mr. McKim and the LBA prior to this conversation.

The email sent by Mr. McKim to Mr. Schneider after this conversation indicates that Mr. McKim had no specific knowledge of LBA procedures in general, or this particular LBA, and was not sure what documents Mr. Schneider wanted:

Pat Schneider has indicated that he intends to challenge this approval in court, and he requires documentation of our approval for that purpose. *I assume* there is no written decision, as this is an LBA, but something else from the file, such as the approved drawing *may suffice*. *I have copied Pat so he can clarify if needed.*²²

Mr. Schneider replied to this email as follows, "Yes, I'd like to make or get a copy of the file as soon as possible, *particularly the approved plans.*"²³

Notwithstanding Mr. McKim's uncertainty about the LBA process, and his invitation to Mr. Schneider to clarify the information he was

²⁰ Appellants' Opening Brief, at 5-6.

²¹ Schneider Declaration ¶¶ 3 and 9, CP at 109 and 111.

²² CP at 107-8. (Emphasis supplied.)

²³ CP at 107 (Emphasis supplied.)

seeking, the record reflects no further actions by Mr. Schneider asking if a land use decision had been issued or clarifying the information he wanted.

Appellants' Opening Brief then recounts the subsequent steps that Drezner/Gray's representatives took to obtain copies of the documents they wished to see, including several contacts between clerical personnel at DPD and a legal assistant at Drezner/Gray's law firm.²⁴ Those communications focused on obtaining a copy of the recorded LBA, and the Legal Assistant at Drezner/Gray's law firm refers to payment for "a copy of the recorded LBA" and asks to be advised when she could pick up "the document."²⁵ DPD staff responded the same day that they were waiting for "it to come back from the County Recorders [sic] office."²⁶ The legal assistant was satisfied with that response.²⁷

C. What Appellants Failed To Do.

The printout from the City's website shows that "Anderson, M." was the DPD employee responsible for reviewing and approving the LBA for Land Use and Zoning compliance.²⁸ The record does not reflect any attempt by Drezner/Gray's representatives to contact Ms. Anderson. Neither does the record reflect any attempt of Drezner/Gray's

²⁴ Appellants' Opening Brief, at 6-8.

²⁵ CP at 106.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Schneider Declaration, Exhibit A, CP at 115.

representatives to go to the DPD Public Resource Center and look at the file. (Had Drezner/Gray’s counsel wanted to get a copy of the recorded LBA more quickly, it was available on the King County Recorder’s website on November 18, 2011.²⁹)

Drezner/Gray assert that “Appellants could do nothing that would have compelled the City to disclose the November 2, 2011 letter prior to expiration of the appeal period.”³⁰ They further claim that “[N]othing Appellants could have done—not even requesting a file in person—would have resulted in timely notice of the November 2, 2011 letter.”³¹ Despite these assertions, the record is clear that the “Director’s Decision” approving the LBA was in the project file at the Public Resource Center on the very day it was issued—November 2, 2011.³²

III. ISSUES PRESENTED BY THIS CASE

Does a final discretionary land use decision authorizing the subdivision of land become something other than “final” for purposes of the Land Use Petition Act (“LUPA”) because there are ministerial steps remaining to be completed after issuance of the decision?

²⁹ CP at 138.

³⁰ Appellants’ Opening Brief at 24.

³¹ Appellants’ Opening Brief at 27

³² CP at 44 and 137.

Where a local government makes a land use decision, mails that decision to the applicant seeking approval, and places a copy of that decision in its official file which is available for public review—all according to the procedures set forth in its land use code—can a party seek judicial review of that decision more than 21 days after the decision was issued because the party relied on unofficial and informal sources of information concerning that decision?

IV. STANDARD OF REVIEW

A party seeking relief under LUPA has the burden of establishing that one of the statutory standards for granting that relief has been satisfied.³³ “In reviewing an administrative decision, an appellate court stands in the same position as the superior court.”³⁴

In this case, Drezner/Gray assert that the City erroneously interpreted its own land use code. This is a conclusion of law. “Conclusions of law are reviewed de novo.”³⁵ In reviewing this conclusion, this court should grant the City’s interpretation due deference.³⁶

³³ RCW 36.70C.130(1).

³⁴ *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 405-6, 120 P.3d 56 (2005) (quoting *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

³⁵ *Id.* at 406.

³⁶ RCW 36.70C.130(1)(b).

V. ARGUMENT

A. **The City's Decision Approving the Duffus LBA on November 2 Was the City's Final Decision For Purposes of LUPA.**

1. **The City's Decision approving the Duffus LBA Satisfies LUPA's Criteria for a Final Land Use Decision and the City Made that Decision as Its Code Required.**

LUPA defines a land use decision as “a final determination by a local jurisdiction’s body or officer with the highest level of authority to make the determination . . . on: (a) an application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used”³⁷ The November 2nd letter and review checklist Ms. Anderson mailed to the designated contact person on the Duffus LBA and placed in the City’s project file was the City’s final land use decision for purposes of LUPA.

Anderson was designated by the Director of DPD, its highest official, to make final decisions on LBAs.³⁸ Drezner/Gray do not contest this. Anderson determined, and then put in writing on November 2nd that the LBA “complied with applicable SMC provisions.”³⁹ Drezner/Gray do not contest this. That decision was final because Seattle does not allow

³⁷ RCW 36.70C.020(2).

³⁸ Anderson Declaration, ¶ 3, CP at 44.

³⁹ Anderson Declaration, ¶ 7, *Id.*

administrative appeals for Type I land use decisions.⁴⁰ Drezner/Gray cannot contest this. Approval of an LBA is required before a lot created by the LBA can be improved, developed, or sold.⁴¹ Drezner/Gray cannot contest this. Thus the decision issued by the City on November 2nd approving the Duffus LBA satisfies the statutory definition of a final land use decision. As such it triggers LUPA's 21-day limitation period for appeals.

Here, Drezner/Gray's representatives *assumed* that the *permit* issued *after* the land use decision and after recording of the LBA was the land use decision that mattered for purposes of calculating LUPA's appeal deadline. They state this assumption as a fact in their legal memorandum opposing dismissal at the trial court.⁴² But, LUPA recognizes that a land use decision can take more than one form. As noted above, LUPA refers to a "project permit *or other governmental approval*."⁴³ Recognizing the multiple forms that a land use decision can take LUPA provides for several different ways of determining when a land use decision is "issued."⁴⁴

⁴⁰ SMC §23.76.022 A (1).

⁴¹ SMC ch. 23.20.

⁴² CP at 89 ("The 21-day appeal period commences the day the permit *issues*, and the permit . . . is *the final determination* by DPD." (Emphasis in original.)

⁴³ RCW 36.70C.020(2) (Emphasis supplied.).

⁴⁴ RCW 36.70C.040(4).

Drezner/Gray's assumption that the LBA *permit* was the City's final land use *decision* was simply wrong. Both the procedures set forth in the City's land use code regarding Type I decisions and the plain English description of those procedures in CAM 213 B state that a Director's decision *precedes* both the recording of the LBA and the issuance of the LBA permit—"A letter *documenting the Director's Decision* and outlining the recording process will be sent to the designated contact person."⁴⁵

Further, as Ms. Anderson establishes, the only action the City took on November 15 was to note that the five-dollar recording fee had been paid.⁴⁶ While DPD staff may make such entries on its website for its own internal administrative purposes, there can be no serious argument that this action meets LUPA's definition of a land use decision.

Drezner/Gray's representatives never examined the project file. They never asked Ms. Anderson, the City official who made the decision on this LBA, about that decision. The people they did contact had no connection to that decision. Drezner/Gray claim that "every contemporaneous document confirms that the relevant decision date was November 15, 2011."⁴⁷ This statement imagines out of existence the City's land use decision dated November 2nd that was mailed to the

⁴⁵ CP at 76 (Emphasis supplied.).

⁴⁶ Anderson Declaration, ¶ 17, CP at 46.

⁴⁷ Appellants' Opening Brief at 10.

designated contact person and put in the City's official project file on that date.

2. THE CITY'S TWO-STEP PROCESS FOR APPROVING LBAs IS CONSISTENT WITH THE PROCESS REQUIRED BY STATUTE FOR SUBDIVISIONS AND THE CITY'S DETERMINATION THAT THE LBA COMPLIED WITH APPLICABLE REGULATIONS COMPLETED THE FIRST STEP IN THAT PROCESS AND WAS ITS FINAL DECISION.

Drezner/Gray assumed that a *final* land use decision is the same as the *last action* that a municipality performs in connection with an application for a governmental approval. That assumption is directly contrary to process by which all types of land divisions have been handled in our state for decades.

As noted above, state subdivision law requires a two-step approval process for formal subdivisions.⁴⁸ The first step in that process is completed when a local government grants *preliminary* plat approval. But there is no doubt that this *preliminary* approval is a *final land use decision* for purposes of judicial review under LUPA. "Parties wishing to challenge a local agency's approval of a preliminary plat must file a land use petition . . . in accordance with the time limits and other procedures . . . pursuant to

⁴⁸ *Loveless v. Yantis*, 82 Wn.2d 754, 761, 513 P.2d 1023 (1973).

the Land Use Petition Act”⁴⁹ The second step of the subdivision process involves ministerial actions by local governments—approval and recording of the final plat. But these subsequent actions have never been interpreted to delay the time within which an action challenging a preliminary plat must be filed.

So too for the other two land division processes authorized by the City’s code—short subdivisions and LBAs. Regarding short subdivisions, the City categorizes them as Type II approvals.⁵⁰ As such, notice that the decision has been made must be given by DPD.⁵¹ That notice triggers the administrative appeal process for Type II decisions.⁵² All of this takes place *after* the land use decision has been made and *before* the City grants its final approval to a short plat.⁵³ Regarding LBAs, as noted above, CAM 213 B describes a similar process: first, a land use decision that is then followed by recording and issuance of a permit. In all three subdivision processes, it is the issuance of the land use decision that triggers subsequent appeals.

⁴⁹ ROBERT D. JOHNS & DUANA T. KOLOUSKOVÁ, SUBDIVISION OF LAND at § 2.6(1) (WASHINGTON REAL PROPERTY DESKBOOK, Vol. 6, ch. 3, 2012).

⁵⁰ SMC §23.76.004, Table A.

⁵¹ SMC §23.76.020(C)(2)(a) and (e).

⁵² *Id.*

⁵³ SMC §23.24.050(A).

Moreover, nothing in LUPA supports appellants' assumption that a land use decision may be disregarded because subsequent ministerial clerical actions remained to be performed after issuance of that decision. In strictly construing the 21-day limit, our courts have had occasion to determine when a land use decision is a "final determination." A decision is "final" if it "leaves nothing open to further dispute and . . . sets at rest cause of action between parties."⁵⁴

Here Drezner/Gray assert that the Duffus LBA is invalid because it does not comply with zoning standards in the City's land use code.⁵⁵ The City's decision in this case includes a review checklist with six different criteria relating to code compliance checked off. This checklist shows that the City determined "The LBA is consistent with applicable provisions of the Land Use Code."⁵⁶ The letter documenting this decision says the LBA "has been APPROVED."⁵⁷ The November 2nd decision was, without question, the City's final decision that the LBA met the City's zoning standards.

Following the Director's land use decision on November 2nd, there were ministerial actions that remained to be done: check property

⁵⁴ *Samuel's Furniture, Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 452, 54 P.3d 1194 (2002) (quoting Black's Law Dictionary 567 (5th ed. 1979).

⁵⁵ CP at 5-7.

⁵⁶ CP at 59-60.

⁵⁷ CP at 58.

addresses, record the LBA, and collect a \$5.00 recording fee.⁵⁸ When those ministerial steps were completed, the LBA permit was issued. None of these ministerial steps, however, could be characterized as a land use decision. They had nothing to do with a determination that the application complied with the City's land use code.

There was nothing left for the City to decide following its land use decision on November 2nd. This decision was not an "intermediate" step as appellants' claim, but was instead, the one and only—the *final*—determination that the LBA met zoning standards.

Drezner/Gray cite two cases for the proposition that doubts as to the finality of a decision are to be resolved against local government. In both cases the local government sought dismissal of a *permit applicant's* LUPA petition by claiming that an earlier government document or action triggered the LUPA limitations period.

In *Harrington v. Spokane County*⁵⁹ the county issued a building permit to Harrington. When Harrington challenged that permit, the county claimed that an earlier letter triggered LUPA's deadline for filing a land use petition. That letter had informed Harrington that the septic system he proposed would not be approved. The county argued, and the trial court

⁵⁸ CP 45 and 131.

⁵⁹ 128 Wn. App. 202, 114 P.3d 1233 (2005).

agreed, that LUPA only applied to “adverse” decisions; and, since the permit was not “adverse,” the trial court decided the letter started the appeal period. This contorted reasoning was rejected on appeal. Instead the *Harrington* court noted that for the LUPA limitation period to apply, “A decision must be clearly cognizable as a final determination of rights.”⁶⁰

In *WCHS, Inc. v. City of Lynnwood*⁶¹ the City of Lynnwood attempted to prevent a chemical-dependency treatment center from locating in the city by passing an emergency ordinance prohibiting such a use in the area where it was proposed.⁶² As part of that effort, Lynnwood claimed that a letter it had written to the applicant about its application for a business license triggered the LUPA limitation period. Before noting that doubts as to finality must be resolved “in favor of the citizen”—in this case a permit applicant whose rights Lynnwood was doing everything in its power to frustrate—the court described what is needed for a final decision:

An agency’s letter does not constitute a final order unless the letter clearly fixes a legal relationship as a consummation of the administrative process. The letter

⁶⁰ *Id.* at 212

⁶¹ 120 Wn. App. 668, 86 P.3d 1169, *review denied*, 152 Wn.2d 1034 (2004).

⁶² *Id.* at 672. The lengths to which Lynnwood was willing to go in this case can be inferred from this court’s characterization of Lynnwood’s positions on appeal: “The City makes an absurd argument”; and “This argument is equally ridiculous.” *Id.* at 675-6.

must be clearly understandable as a final determination of rights⁶³

Lynnwood's letter in *WCHS* did not meet that definition. The City's decision here did. Here there was nothing left for the City to decide.

There is a more fundamental distinction between these two cases and this one—here the City followed the procedures for making a decision established in its land use code. Here the city did precisely what it had told the public it would do regarding the review and approval of LBAs. In *Harrington*, the county's retrospective review of its files after a lawsuit was filed led to a novel argument that the earlier letter was, in fact, its land use decision. In *WCHS*, the situation was even more extreme—the letter was apparently part of a conscious attempt to deprive the permit applicant of its rights. These two cases have no relevance to this case.

3. THIS COURT SHOULD GIVE GREAT WEIGHT TO THE CITY'S INTERPRETATION OF ITS LAND USE CODE AND ITS DETERMINATION THAT IT MADE ITS FINAL DECISION TO APPROVE THE DUFFUS LBA ON NOVEMBER 2.

The Supplemental Declaration of Malli Anderson also establishes that DPD, the City agency with responsibility for administering and enforcing Seattle's complex land use regulatory system, has determined that the Director's Decision, entered into its project file and mailed to the

⁶³ *Id.* at 679.

applicant's representative on November 2nd, is its final land use decision on the LBA: "[T]he approval of a LBA, like the LBA Decision in this case, is DPD's final and conclusive approval of the LBA application"⁶⁴ Drezner/Gray argue that it is not; that is, they argue that the City's approval procedures for LBAs are ambiguous.

But if that is the case, this court should apply the rule of statutory construction that gives great weight to the interpretation of an agency charged with the administration and enforcement of a regulatory statute. As the court noted in a landmark case interpreting the Shoreline Management Act just a few years after its adoption, "The primary foundation and rationale for this rule is that considerable judicial deference should be accorded to the special expertise of administrative agencies. Such expertise is often a valuable aid in interpreting and applying an ambiguous statute in harmony with the policies and goals [of the statute.]"⁶⁵

Similarly, in LUPA cases, our courts have long granted deference to a local jurisdiction's interpretation of its own land use regulations.⁶⁶

⁶⁴ Supplemental Declaration of Malli Anderson in support of Respondent's Motion to Dismiss, ¶ 4, CP at 131.

⁶⁵ *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).

⁶⁶ *Mellish v. Frog Mountain Pet Care*, 172 Wn.2d 208, 218-9, 257 P.3d 641 (2011), quoting *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2005).

Ms. Anderson has been employed at DPD for 30 years.⁶⁷ She is authorized to make the decision approving the Duffus LBA; and she has stated that this decision was final when she documented it in the letter that was mailed to the applicant and placed in the City's official project file on November 2nd.⁶⁸ This Court should defer to the City's interpretation of its own code and hold that the City made its final land use decision on the Duffus LBA on November 2nd.

B. Issuance of the City's Final Land Use Decision Triggered the LUPA Limitation Period.

The date on which a land use decision is issued begins the period within which a party seeking judicial review of that decision must file a land use petition in superior court.

Because this date is so important, the statute defines precisely when the various types of land use decisions are deemed to be issued.⁶⁹ Where, as here, the decision is made in writing and mailed, the decision is deemed to be issued "[t]hree days after [it] is mailed by the local jurisdiction"⁷⁰

⁶⁷ CP at 43.

⁶⁸ *Id.*

⁶⁹ RCW 36.70C.040(4).

⁷⁰ RCW 36.70C.040(4)(a).

The City's decision approving the Duffus LBA was mailed on November 2nd.⁷¹ Thus, this decision is deemed to have been issued three days later. LUPA's 21-day time limit for filing a land use petition in this case began on November 5.

C. Drezner/Gray Did Not Seek Judicial Review of the City's Decision Approving the Duffus LBA Within LUPA's Limitation Period.

LUPA provides that a land use petition "is timely if it is filed . . . within twenty-one days of the issuance of the land use decision."⁷² November 26 is 21 days after November 5, the date the city issued its decision approving the Duffus LBA. But November 26, 2011 was a Saturday. So, as provided for by CR 6(a), Drezner/Gray had until the following Monday, November 28, to file their land use petition in this case.

Drezner/Gray filed their land use petition in this case eight days later, on December 6.⁷³ That petition was untimely.

D. The Court Should Affirm the Dismissal of this Case Because It Was Not Timely Filed.

From the first reported decision regarding LUPA's time limit for filing a land use petition—*Hale v. Island County*⁷⁴—to the most recent—

⁷¹ Anderson Declaration, ¶ 7, CP at 44.

⁷² RCW 36.70C.040(3).

⁷³ LUPA Petition, CP at 1.

*Applewood Estates v. City of Richland*⁷⁵—Washington courts have strictly applied LUPA’s limitation on the timely filing of a land use petition: “A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court”⁷⁶ We have not found, and Drezner/Gray have not cited, any case where a court permitted the case to proceed to a decision other than dismissal where the land use petition was not timely filed.

E. The Alternative Approaches Suggested by Drezner/Gray Are Not Supported by Facts in the Record; Are Not Supported by Legal Authority; and Would Undermine LUPA’s Fundamental Purpose.

Drezner/Gray argue that the court should reverse the dismissal of this untimely land use petition because:

- Drezner/Gray made “diligent attempts” to learn of the final land use decision, and
- Drezner/Gray never received actual notice of the final land use decision.

Both of these arguments would require the court to create exceptions to LUPA’s carefully crafted and unambiguous requirements and would require the court to reverse a consistent series of cases holding that

⁷⁴ 88 Wn. App. 161, 946 P.2d 1192 (1997).

⁷⁵ 166 Wn. App. 161, 269 P.3d 388 (2012).

⁷⁶ RCW 36.70C.040(2).

LUPA's time limit is strictly enforced. Adoption of either alternative would undermine LUPA's fundamental purpose.

But, before reaching these two legal issues, the court should consider whether Drezner/Gray's efforts in this case were, indeed, diligent. That consideration serves two purposes: it demonstrates that there is no factual basis to support the relief Drezner/Gray seek, and it demonstrates the type of case-by-case factual analysis that would ensue if this court were to adopt the approach advocated by Drezner/Gray here.

1. Drezner/Gray's Efforts to Obtain the Information Needed to File a Timely Land Use Petition Were Not Diligent Because They Did Not Take the Simple Steps Prescribed by the City to Obtain Reliable Information.

Drezner/Gray first learned of the Duffus LBA from the City's website.⁷⁷ They claim they were justified in relying on their interpretation of the legal import of the information on that website. But, here is what the City's website says about the reliability of the information posted online:

Neither the City, or any department, officer, or employee of the City warrants the accuracy, reliability or timeliness of any information published by this system . . . and shall not be held liable for any losses caused by reliance on the accuracy, reliability or timeliness of such information. Portions of such information may be incorrect or not current. Any person or entity that relies on any information obtained from this system does so at their own risk.⁷⁸

⁷⁷ CP at 102.

⁷⁸ CP at 94.

The efforts by Drezner/Gray's representatives to learn more about this LBA are set out in detail in their opening brief.⁷⁹ What they do not discuss is what they should have—and easily could have—done to find the Director's decision:

- They did not ask for a copy of the decision.
- They did not attempt to contact the person who had completed the review of the LBA.
- They apparently assumed that the decision in question was a record of survey filed with King County's Department of Records.
- And, most importantly, they did not examine the project file at the City's Public Resource Center.

Their informal attempt to obtain information through unofficial channels ignores the City's clear direction on how to obtain information from DPD. City code requires that

By November 1, 2009, each City Department will, by rulemaking adopt administrative procedures for providing access to public records in accordance with the provisions of RCW 42.56. These procedures will be made available in each department and on their respective websites.”⁸⁰

⁷⁹ Appellants' Opening Brief at 5-8.

⁸⁰ SMC § 3.104.030(A).

DPD complied with this requirement by preparing Client Assistance Memo (CAM) 107 and posting that document on its website.⁸¹

CAM 107 tells anyone interested in any of DPD's voluminous records where to go to review them. CAM 107 directs individuals interested in Master Use Permit files—specifically including lot boundary adjustments—to enquire at the Public Resource Center at the Seattle Municipal Tower.⁸² Among other things it notes, “Documents will be available for inspection and copying during the City’s regular business hours.”⁸³

We know from Ms. Anderson’s declaration that she put the decision on the Duffus LBA in the project file on November 2nd.⁸⁴ And we know from Ms. Putnam’s declaration that the decision was in the project file.⁸⁵ There is *no* evidence in the record that contradicts these declarations. Nevertheless, Drezner/Gray assert, “[N]othing Appellants could have done—not even requesting a file in person—would have

⁸¹ CAM 107 is not in the record before this court. Duffus requests that this court take judicial notice of this document as authorized by ER 201 and ER 1101(a). That DPD presented the information in this document to the public is not subject to reasonable dispute and this can be readily determined from sources whose accuracy cannot reasonably be questioned. This document can be found online at <http://web1.seattle.gov/DPD/CAMs/CamDetail.aspx?cn=107>. A copy of CAM 107 is attached as Appendix B for the Court’s convenience.

⁸² Appendix B at 2.

⁸³ Appendix B at 1.

⁸⁴ CP at 44.

⁸⁵ CP at 1.

resulted in timely notice of the November 2, 2011 letter.”⁸⁶ Drezner/Gray offer no explanation to support this assertion. Nor can they.

This court can take judicial notice of the fact that the law offices of Drezner/Gray’s counsel (whose address is shown on the land use petition filed in this case⁸⁷) are five blocks from the Seattle Municipal Tower (whose address can be found on Exhibit H to the Anderson Declaration⁸⁸). Thus, this court must decide if it was diligent to rely on information on a website-cum-disclaimer, to call a former colleague to enquire about a matter with which that colleague had no apparent connection, and then to delegate further actions to clerical staff when a ten-minute walk to the City’s Public Resource Center—the place the City directs anyone interested in information concerning a lot boundary adjustment to go—would have led to the discovery of a decision that begins with this sentence: “Your Lot Boundary Adjustment has been APPROVED.”⁸⁹ To say the least, Drezner/Gray’s efforts in this case were not diligent.

⁸⁶ Appellants’ Opening Brief at 27.

⁸⁷ CP at 1.

⁸⁸ CP at 75.

⁸⁹ CP at 58 (Emphasis in original.).

2. Drezner/Gray’s Suggested “Diligent Attempts” Standard Would Eliminate the Certainty LUPA Now Provides and That is One of Its Fundamental Goals.

Drezner/Gray argue that an interested party only needs to make “diligent attempts” to learn of a final land use decision. This “diligent attempts” standard would eliminate the certainty LUPA now provides. Neither the public nor the permit applicant could be sure about the finality of a land use decision under this standard. As we discussed immediately above, courts would have to evaluate the degree of diligence in each case. A “diligent attempts” standard does not fit into the framework of LUPA, and this court should not create such an exception.

3. No Legal Authority Supports Drezner/Gray’s Suggestion that An Interested Party is Entitled to Actual Notice of a Final Land Use Decision.

Drezner/Gray argue that good-faith filing within 21 days of actual notice should suffice under LUPA. But there is no reported decision that permits a land use decision to be filed after LUPA’s time limit has expired. And the two cases cited by Drezner/Gray to support their equitable tolling theory hold that the petitions in those cases were not timely filed.

Drezner/Gray cite a footnote in *Habitat Watch v. Skagit County*⁹⁰ to support their argument. In that case Habitat Watch filed an untimely land use petition. It argued that it never received notice of a proposed golf course even though local regulations required such notice to be given.⁹¹ When Habitat Watch learned of the decision permitting development of the golf course, it sought revocation of that approval in an administrative appeal.⁹² It did not file its land use petition until after its unsuccessful administrative appeal and more than 21 days after it learned that the county had issued the permit. In the footnote cited by Drezner/Gray, the court said that if Habitat Watch had filed a timely petition after receiving actual notice “things *might* have been different.”⁹³ This passing comment in a footnote does not “allow” delayed commencement of LUPA’s 21-day appeal period, as Drezner/Grey assert.⁹⁴

Drezner/Gray’s reliance on *Nickum v. City of Bainbridge Island*⁹⁵ is even more strained. In *Nickum* a property owner allowed Verizon to construct a cellular phone tower on its property.⁹⁶ A neighbor did not learn of the decision allowing the tower to be built until construction

⁹⁰ 155 Wn.2d at 409 n.7.

⁹¹ *Id.* at 402-03.

⁹² *Id.* at n.6.

⁹³ *Id.* at n.7 (Emphasis supplied).

⁹⁴ Appellant’s Opening Brief at 27.

⁹⁵ 153 Wn. App. 366, 223 P.3d 1172 (2008).

⁹⁶ *Id.* at 372.

commenced more than 21 days after the city’s final land use decision.⁹⁷ The aggrieved neighbor argued that a LUPA deadline should be equitably tolled.⁹⁸ In another footnote, the *Nickum* court acknowledged the *Habitat Watch* footnote and noted that in some circumstances an appeal based on actual notice *may* be found timely but the court did not further “address this possibility.”⁹⁹ Rather, the court held that the equitable tolling doctrine does not apply to a LUPA petition: “The LUPA deadline controls access to the trial court’s jurisdiction over LUPA appeals... and, thus, cannot be equitably tolled.”¹⁰⁰ Drezner/Gray do not accurately portray *Nickum*’s treatment of equitable tolling. That case does not support their position that the equitable tolling doctrine can apply to a LUPA case—rather, *Nickum* holds that it cannot.

Washington courts have consistently held that interested parties are not entitled to actual notice of a final land use decision.¹⁰¹ In *Samuel’s Furniture*, the Department of Ecology argued that it did not need to comply with LUPA’s 21-day deadline because it did not receive notice of a decision. The court held that “LUPA does not require that a party receive individualized notice of a land use decision in order to be subject to the

⁹⁷ *Id.*

⁹⁸ *Id.* at 374.

⁹⁹ *Id.* at n.11.

¹⁰⁰ *Id.* at 382.

¹⁰¹ *Samuel’s Furniture*, 147 Wn.2d at 440.

time limits for filing a LUPA petition...LUPA seems to merely require that a local jurisdiction provide general notice....”¹⁰² Earlier this year, in a case involving the adequacy of notice to neighbors of a proposed planned unit development, the court held that “the Neighbors were not entitled to personal notice, distinct from the notice contemplated by the filing of a public record,” and their LUPA petition was time barred.¹⁰³ Similarly, Drezner/Gray were not entitled to personal notice here. The land use decision was available to the public in the Duffus LBA project file at the City’s Public Resource Center. That is all that is required.

4. Drezner/Gray’s Arguments and Suggested Alternative Approaches are Inconsistent With and Would Frustrate LUPA’s Purpose to Provide Consistent, Predictable, and Timely Review of Land Use Decisions.

LUPA’s stated purpose is to “provide consistent, predictable, and timely judicial review.”¹⁰⁴ As discussed above, the two alternative approaches—a “diligent attempts” standard and an actual notice requirement—suggested by Drezner/Gray would frustrate LUPA’s stated purpose.

Instead of “consistent, predictable, and timely judicial review,” every land use action would be open to claims of diligent action or lack of

¹⁰² *Id.* at 462.

¹⁰³ *Applewood Estates*, 166 Wn. App. at 169.

¹⁰⁴ RCW 36.70C.010.

notice on the part of petitioners that would require courts to decide on a case-by-case basis whether the petitioners had been diligent and when the petitioners should have learned of the decision in order to decide whether the equities would support tolling LUPA's limitation period.

Courts considering untimely LUPA petitions use strong, unequivocal language to describe the importance of the 21-day deadline:

- “LUPA provides stringent deadlines, requiring that a petitioner file a petition for review within 21 days of the date of the land use decision.”¹⁰⁵
- “The purpose and policy of the law in establishing definite time limits is to allow property owners to proceed with assurance in developing their property.”¹⁰⁶
- “LUPA’s 21-day filing period is unambiguous.”¹⁰⁷
- “To allow Respondents to challenge a land use decision beyond the statutory period of 21 days is inconsistent with the Legislature’s declared purpose in enacting LUPA. Leaving land use decisions open to reconsideration long after the decisions are finalized places property owners in precarious positions and undermines the Legislature’s intent to provide expedited appeal procedures in a

¹⁰⁵ *Asche v. Bloomquist*, 132 Wn. App. 784, 795, 133 P.3d 475 (2006).

¹⁰⁶ *James v. County of Kitsap*, 154 Wn.2d 574, 589, 115 P.3d 286 (2005).

¹⁰⁷ *Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 901, 83 P.3d 433 (2004).

consistent, predictable, and timely manner.”¹⁰⁸

Drezner/Gray argue that dismissal of their untimely petition would be contrary to the purpose of LUPA. This argument ignores the body of case law cited above. Rather it is their position that would deal a fatal blow to LUPA’s underlying purpose.

LUPA’s unambiguous 21-day deadline must be strictly applied to provide “consistent, predictable, and timely judicial review.” That is LUPA’s fundamental purpose. The Drezner/Gray petition was not timely filed. This court should affirm the trial court’s dismissal of this land use petition.

F. This Case Is Not Appropriate for Equitable Estoppel and To Apply that Doctrine Here Would Damage the Rights of Duffus.

Drezner/Gray argue that the City affirmatively mislead them and that the City should be estopped from asserting that its final decision was made on November 2nd. We are confident that the City will reply to this argument and will demonstrate that Drezner/Gray have not carried their burden to establish the facts needed before the doctrine of equitable estoppel can be applied. We will not duplicate those arguments here. Rather we note that there is no basis whatsoever for applying that doctrine

¹⁰⁸ *Chelan County v. Nykreim*, 146 Wn.2d 904, 933, 52 P.3d 1 (2002).

to Duffus. Further, granting the relief sought by Drezner/Gray would damage the rights of Duffus and there is no equitable basis for doing so.

Duffus had no contact with and gave no information to Drezner/Gray concerning the LBA. Duffus did not, in any way, prevent or dissuade Drezner/Gray from viewing the project file at the City's Public Resource Center. There can be no basis to prevent Duffus from correctly asserting that the City's final land use decision was made on November 2nd and that Drezner/Gray failed to file a land use petition in the time set for doing so by LUPA.

Further, should equitable estoppel be applied to this case, allowing Drezner/Gray to proceed with this untimely-filed lawsuit, it requires no evidence to sustain the proposition that Duffus will be damaged. Our courts have already recognized on many occasions that delaying final resolution of a land use decision damages the property owner. "The purpose and policy of the law in establishing definite time limits is *to allow property owners to proceed with assurance . . .*";¹⁰⁹ and "Leaving land use decisions open to reconsideration long after the decisions are finalized *places property owners in precarious positions . . .*"¹¹⁰

¹⁰⁹ *James*, 154 Wn.2d at 589 (Emphasis supplied).

¹¹⁰ *Chelan County*, 146 Wn.2d at 933 (Emphasis supplied).

G. Duffus Should be Awarded His Attorneys' Fees and Costs on Appeal.

RCW 4.84.370 provides that the appellate court “shall award” attorneys’ fees on appeal to the prevailing party in a land use case if that party:

- prevailed before the local government that made the land use decision, and
- prevails in all prior judicial proceedings.

In this case Duffus prevailed before the City because the Duffus LBA was approved. Duffus also prevailed in superior court. If Duffus prevails here, he will have satisfied the statutory conditions that entitle him to an award of attorneys’ fees. This Court has held that the award of attorneys’ fees in “mandatory.”¹¹¹

As required by RAP 18.1, Duffus requests the Court to award him the attorneys’ fees and costs incurred on appeal.

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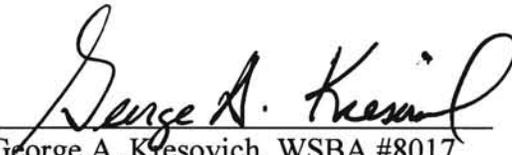
¹¹¹ *Moss v. City of Bellingham*, 109 Wn. App. 6, 30, 31 P.3d 703 (2001).

VI. CONCLUSION

For the reasons stated above, this court should affirm the trial court's dismissal of Drezner/Gray's land use petition.

RESPECTFULLY SUBMITTED this 5th day of September, 2012.

HILLIS CLARK MARTIN & PETERSON P.S.

By: 
George A. Kresovich, WSBA #8017
Melody B. McCutcheon, WSBA #18112
Holly D. Golden, WSBA #44404
Attorneys for Additional Respondents

ND: 20520.002 4841-7163-6240v2

**APPENDIX A TO THE BRIEF OF ADDITIONAL
RESPONDENTS**

**DECLARATION OF MALLI ANDERSON
CLERKS PAPERS 43-80**

FILED

12 JAN 03 PM 3:23

The Honorable Richard D. Ladie
KING COUNTY
SUPERIOR COURT CLERK
Oral Argument January 12, 2012 9:00
E-FILED

CASE NUMBER: 11-2-41607-1 SEA

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

JONATHAN DREZNER, MD, and HEIDI
GRAY, MD, Husband and Wife,

Petitioners,

vs.

CITY OF SEATTLE,

Respondent/Defendant,

and

DAN DUFFUS; SOLEIL LLC; SOLEIL
HOMES, LLC; and DL Dalton, LLC,

Additional Respondents.

No. 11-2-41607-1SEA

DECLARATION OF MALLI ANDERSON
IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS

I, Malli Anderson declare:

1. I am over 18 years old, have personal knowledge of the facts described in my
declaration, and am competent to testify to these facts.

2. I am a Land Use Planner II employed by the City of Seattle's Department of
Planning and Development (DPD), a position I have held from March 11, 1985 to the present. In
total I have been employed by DPD for 30 years.

DECLARATION OF MALLI ANDERSON
IN SUPPORT OF MOTION TO DISMISS - 1

Peter S. Holmes
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200

1 3. As part of my work responsibilities, I have been designated by DPD's Director to
2 review and make final decisions to approve or deny proposed Lot Boundary Adjustment
3 ("LBA") applications, including the LBA application and the subsequent decision that is the
4 subject of the petition before this Court ("the Duffus LBA").

5 **The LBA Application**

6 4. A printout from DPD's permit-tracking system for the LBA before this Court is
7 attached to my declaration as Attachment A.

8 5. On October 11, 2011, the applicant Dan Duffus acting on behalf of Soleil Homes,
9 LLC and DL Dalton, L.L.C. (collectively "Duffus"); applied for the Duffus LBA. Attachment
10 A, on page one, shows the October 11, 2011 Duffus LBA application date.

11 6. Table A of the Seattle Municipal Code ("SMC") 23.76.004 identifies a Lot
12 Boundary Adjustment as a Type I decision. A copy of this code section is attached to my
13 declaration as Attachment B.

14 **The LBA Decision**

15 7. On November 2, 2011, I approved the Duffus LBA and sent a written approval
16 decision to Mark Knoll, a project contact for Duffus. Along with this decision, I sent a written
17 checklist to Mr. Knoll where I indicated the Duffus LBA application complied with applicable
18 SMC provisions. A copy of the Duffus-LBA-application decision and checklist (collectively the
19 LBA Decision) is attached to my Declaration as Attachment C.

20 8. On November 2, 2011, I placed a copy of the LBA Decision in the official file
21 that DPD maintains for the Duffus LBA.

22 9. The checklist portion of the LBA Decision is a restatement of the code provisions
23 that determine if a LBA application may be approved by the City under SMC 23.28.030. A copy
of this code section is attached to my declaration as Attachment D.

1 10. Type I decisions are, according to SMC 23.76.028.A.1, "approved for issuance at
2 the time of the Director's decision that the application conforms to all applicable laws". A copy
3 of this code section is attached to my declaration as Attachment E.

4 11. Consistent with SMC 23.76.028.A.1, the LBA Decision was issued on November
5 2, 2011 after I determined the Duffus LBA application conformed to all applicable City code
6 provisions.

7 12. The LBA Decision was DPD's final land use decision on the Duffus LBA
8 application. The November 2, 2011 LBA Decision is the same type of approval decision that
9 DPD issues for any approved LBA.

10 13. Under SMC 23.76.020.C.1, notice of a Type I permit decision is not required to
11 be given. A copy of this code section is attached to my declaration as Attachment F.

12 Accordingly, notice of the November 2, 2011 LBA Decision was not given to the public.

13 **The recording of the Duffus LBA**

14 14. While approval of the LBA Decision is DPD's final and conclusive approval of
15 the Duffus LBA application, Duffus was required to pay an additional recording fee before the
16 LBA was recorded with the King County Recorder's Office. On November 15, 2011, Duffus
17 paid five dollars as the balance of the recording fee. Attachment A at page three shows the
18 recording-fee-payment date.

19 15. On November 15, 2011, DPD confirmed that the fees necessary to record the
20 LBA were received. The fact that the recording fees were paid on November 15th is reflected on
21 Attachment A, page three.

22 16. Attachment A, page three, also identifies November 15, 2011 as a "decision date".
23 November 15, 2011 is not the date the LBA Decision was issued. That occurred on November 2,
2011 when I determined the Duffus LBA application conformed to all applicable City land use
24 regulations and mailed the LBA Decision to Mr. Knoll.

ATTACHMENT A

Project # 3012782

Address	720 W Wheeler St	Permit Number	
Location	CHANGED ADDRESS ON A/P FROM 2502 8TH AVE W TO 720 W WHEELER ST. SLM 10/11/2011	Permit Status	Permit Closed
Records Filed At	720 W Wheeler St	Application Date	Oct 11, 2011
Application Type	LAND USE	Issue Date	Dec 02, 2011
Work Type	FULL REVIEW (COMPLEX)	Expiration Date	Nov 15, 2014
Category	SINGLE FAMILY / DUPLEX	Final Date	Dec 02, 2011
King Co. Assessor's #		Other Applicant	DAN DUFFUS SOLEIL, LLC 300 QUEEN ANNE AVE N SEATTLE, WASHINGTON 98109
Zone/Overlays and ECA	SF5000, AIRPRT, VW 500	Contractor	
Legal Description	PARCEL B OF LBA 3012782	Permit Remarks	KCR#20111117900003 Addresses: A)2502 8th Ave W; B) 720 W Wheeler St
Description of Work	Land use application to adjust the boundary between two parcels of land. Proposed parcel sizes are: A)5,005.4 sq.ft.and B)2,230.5		

Decision Type	I	Ground Disturbance	NO
EDG Required	NO		
TRAO Applies		Development in R.O.W.	
Plat Recording Number(s)		Special Flags	

Project # 3012782**Inspections****Required Inspections - Not Yet Scheduled**

Type	Date	Inspector	Comments
None			

Required Inspections - Scheduled

Type	Date	Inspector	Comments
None			

Completed Inspections

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

Type	Date	Result	Inspector	Comments
SITE VISIT	Oct 28, 2011	Passed	ANDERSON	

Waived Inspections

Type	Date	Inspector	Comments
None			

Definition of Terms

SITE VISIT	A land use site visit inspection is provided to assess the implications of the proposed development.
SITE VISIT	A land use site visit inspection is provided to assess the implications of the proposed development.

Project # 3012782**Reviews****Review Cycles**

Review Type	Cycle #	Status	Assignment Date	Complete Date	Assigned To
ADDRESSING	1	Corrections Required	Oct 11, 2011	Oct 26, 2011	Montgomery, S.
ADDRESSING	2	Approved	Nov 08, 2011	Nov 15, 2011	Montgomery, S.
CITY LIGHT	1	Approved	Oct 11, 2011	Oct 20, 2011	
DRAINAGE	1	Approved	Oct 11, 2011	Oct 18, 2011	Berentsen, J.
FIRE	1	Approved	Oct 11, 2011	Oct 25, 2011	
LAND USE	1	Approved	Oct 11, 2011	Nov 02, 2011	Anderson, M.
ORDINANCE	1	Approved	Oct 11, 2011	Oct 12, 2011	Capps, T.
WATER	1	Approved	Oct 11, 2011	Oct 12, 2011	Water, S.
ZONING	1	Approved	Oct 11, 2011	Nov 02, 2011	Anderson, M.

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 # 3012782

Land Use

Application Complete Oct 11, 2011
Decision Date Nov 15, 2011
Plat Recording Number(s)

Land Use Components ([Link to Land Use Information Bulletin for Detail](#))

Component	Description	Detail	Decision	Comments
PLAT LBA	LOT BOUNDARY ADJUSTMENT PLAT		GRANTED	To adjust the boundary between two parcels of lan GRANTED

Project # 3012782**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
10/11/11	Paid	INTAKE APPOINTMENT FOR LAND USE REVIEWS	\$177.00	1	\$177.00	\$177.00
10/11/11	Paid	LOT BOUNDARY ADJUSTMENT - MINIMUM	\$250.00	5	\$1,250.00	\$1,250.00
10/11/11	Paid	RECORDING	\$1.00	139	\$139.00	\$139.00
10/11/11	Paid	GEOTECH AND/OR DRAINAGE REVIEW - MINIMUM	\$177.00	1	\$177.00	\$177.00
11/15/11	Paid	RECORDING	\$5.00	1	\$5.00	\$5.00
				Total Amount	\$1,748.00	\$1,748.00

Project # 3012782**Contacts****Project Contacts**

Name	Primary	Capacity
DAN DUFFUS SOLEIL, LLC 300 QUEEN ANNE AVE N SEATTLE, WASHINGTON 98109	YES	Financially Responsible Party

ATTACHMENT B



Information retrieved December 28, 2011 12:03 PM

Seattle Municipal Code

Title 23 - LAND USE CODE
Subtitle IV Administration
Division 1 Land Use Approval Procedures
Chapter 23.76 - Procedures for Master Use Permits and Council Land Use Decisions
Subchapter I General Provisions

SMC 23.76.004 Land use decision framework

A. Land use decisions are classified into five categories based on the amount of discretion and level of impact associated with each decision. Procedures for the five different categories are distinguished according to who makes the decision, the type and amount of public notice required, and whether appeal opportunities are provided. Land use decisions are categorized by type in Table A for 23.76.004.

B. Type I and II decisions are made by the Director and are consolidated in Master Use Permits. Type I decisions are decisions made by the Director that require the exercise of little or no discretion and that are not appealable to the Hearing Examiner. Type II decisions are discretionary decisions made by the Director that are subject to an administrative open record appeal hearing to the Hearing Examiner; provided that Type II decisions enumerated in Section 23.76.006.C.2 shall be made by the Council when associated with a Council land use decision and are not subject to administrative appeal. Type III decisions are made by the Hearing Examiner after conducting an open record hearing and not subject to administrative appeal. Type I, II or III decisions may be subject to land use interpretation pursuant to Section 23.88.020.

C. Type IV and V decisions are Council land use decisions. Type IV decisions are quasi-judicial decisions made by the Council pursuant to existing legislative standards and based upon the Hearing Examiner's record and recommendation. Type V decisions are legislative decisions made by the Council in its capacity to establish policy and manage public lands.

D. For projects requiring both a Master Use Permit and a Council land use decision as described in this chapter, the Council decision must be made prior to issuance of the Master Use Permit. All conditions established by the Council in its decision shall be incorporated in any subsequently issued Master Use Permit for the project.

E. Certain land use decisions are subject to additional procedural requirements beyond the standard procedures established in this Chapter

<http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CODE&s1=23.76...> 12/28/2011

23.76. These requirements may be prescribed in the regulations for the zone in which the proposal is located, in other provisions of this title, or in other titles of the Seattle Municipal Code.

F. Shoreline appeals and appeals of related SEPA determinations shall be filed with the State Shoreline Hearings Board within 21 days of the receipt of the decision by the Department of Ecology as set forth in RCW 90.58.180.

G. An applicant for a permit or permits requiring more than one decision contained in the land use decision framework listed in Section 23.76.004 may either:

1. Use the integrated and consolidated process established in this chapter;
2. If the applicant includes a variance, lot boundary adjustment, or short-subdivision approval and no environmental review is required for the proposed project pursuant to SMC Chapter 25.05, Environmental Policies and Procedures, file a separate Master Use Permit application for the variance, lot boundary adjustment, or short subdivision sought and use the integrated and consolidated process established in this chapter for all other required decisions; or
3. Proceed with separate applications for each permit decision sought.

Table A for 23.76.004

LAND USE DECISION FRAMEWORK

DIRECTOR'S AND HEARING EXAMINER'S DECISIONS REQUIRING MASTER USE PERMITS

TYPE I Director's Decision (No Administrative Appeal)	TYPE II Director's Decision (Appealable to Hearing Examiner*)	TYPE III Hearing Examiner's Dec (No Administrative Appeal)
<ul style="list-style-type: none"> * Compliance with development standards * Uses permitted outright * Temporary uses, four weeks or less * Intermittent uses 	<ul style="list-style-type: none"> * Temporary uses, more than four weeks, except for temporary relocation of police and fire stations * Variances * Administrative conditional uses 	<ul style="list-style-type: none"> * Subdivisions (preliminary plats)

<ul style="list-style-type: none"> * Interim use parking authorized under subsection 23.42.040.G 	<ul style="list-style-type: none"> * Shoreline decisions (*appealable to Shorelines Hearings Board along with all related environmental appeals)
<ul style="list-style-type: none"> * Uses on vacant/underused lots per Section 23.42.038 	
<ul style="list-style-type: none"> * Certain street uses 	<ul style="list-style-type: none"> * Short subdivisions
<ul style="list-style-type: none"> * Lot boundary adjustments 	<ul style="list-style-type: none"> * Special Exceptions
<ul style="list-style-type: none"> * Modifications of features bonused under Title 24 	<ul style="list-style-type: none"> * Design review, except for streamlined design review pursuant to Section 23.41.018 for which no development standard departures are requested
<ul style="list-style-type: none"> * Determinations of significance (EIS required) except for determinations of significance based solely on historic and cultural preservation 	
<ul style="list-style-type: none"> * Exemptions from right-of-way improvement requirements 	<ul style="list-style-type: none"> * Light rail transit facilities
<ul style="list-style-type: none"> * Temporary uses for relocation of police and fire stations 	<ul style="list-style-type: none"> * The following environmental determinations:
<ul style="list-style-type: none"> * Special accommodation 	<ol style="list-style-type: none"> 1. Determination of non-significance (EIS not required)
<ul style="list-style-type: none"> * Reasonable accommodation 	<ol style="list-style-type: none"> 2. Determination of final EIS adequacy
<ul style="list-style-type: none"> * Minor amendment to a Major Phased Development Permit 	<ol style="list-style-type: none"> 3. Determinations of significance based solely on historic and cultural preservation
<ul style="list-style-type: none"> * Determination of public benefit for combined lot FAR 	<ol style="list-style-type: none"> 4. A decision by the Director to approve, condition or deny a project based on SEPA Policies
<ul style="list-style-type: none"> * Determination of whether an amendment to a Property Use and Development Agreement is major or minor 	<ol style="list-style-type: none"> 5. A decision by the Director that a project is consistent with a Planned Action Ordinance and EIS (no threshold determination or EIS required)
<ul style="list-style-type: none"> * Streamlined design review, pursuant to Section 23.41.018, if no development standard departures are requested 	<ul style="list-style-type: none"> * Major Phased Development
<ul style="list-style-type: none"> * Other Type I decisions that are identified as such in the Land Use Code 	<ul style="list-style-type: none"> * Downtown Planned Community Developments

COUNCIL LAND USE DECISIONS

<p>* TYPE IV (Quasi-Judicial)</p> <ul style="list-style-type: none"> * Amendments to the Official Land Use Map (rezones), except area-wide amendments, and adjustments pursuant to Section 23.69.023. * Public project approvals * Major Institution Master Plans, including major amendments and renewal of a master plan's development plan component * Major amendments to Property Use and Development Agreements * Council conditional uses 	<p>* TYPE V (Legislative)</p> <ul style="list-style-type: none"> * Land Use Code text amendments * Area-wide amendments to the Official Land Use Map * Concept approval for City facilities * Major Institution designations * Waiver or modification of development standards for City facilities * Planned Action Ordinance
--	--

Legislative history/notes:

(Ord. 123649 , Section 51, 2011; Ord. 123566 , Section 5, 2011; Ord. 123565 , Section 2, 2011; Ord. 123495 , Section 75, 2011; Ord. 123046 , Section 56, 2009; Ord. 122816 , Section 6, 2008; Ord. 122497 , Section 4, 2007; Ord. 121828 Section 13, 2005; Ord. 121362 Section 11, 2003; Ord. 121278 Section 7, 2003; Ord. 121277 Section 1, 2003; Ord. 119974 Section 1, 2000; Ord. 119618 Section 7, 1999; Ord. 119096 Section 4, 1998; Ord. 118672 Section 23, 1997; Ord. 118012 Section 23, 1996; Ord. 117598, Section 3, 1995; Ord. 117263 Section 53, 1994; Ord. 117202 Section 11, 1994; Ord. 116909 Section 5, 1993; Ord. 113079 Section 3, 1986; Ord. 112840 Section 2, 1986; Ord. 112522 Section 2(part), 1985.)

Definitions of terms used in Land Use Code.

New legislation may amend this section!

Recently approved legislation may not yet be reflected in Seattle Municipal Code. See the legislative history at the bottom of each section to determine if new legislation has been incorporated.

Search for recently approved legislation referencing this section. (Searches for legislation

<http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CODE&s1=23.76...> 12/28/2011

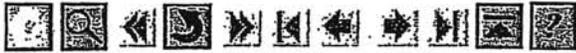
approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

Search for *proposed* legislation that refers to this section. (Searches for Council Bills introduced this year and not yet passed.)

Note: The above searches are provided to assist in research, but they are not guaranteed to capture all relevant legislation. Search directly on the Council Bills and Ordinances Index for the most comprehensive results.

For research assistance, contact the Seattle City Clerk's Office at (206) 684-8344, or by e-mail, clerk@seattle.gov.

For interpretation or explanation of a particular SMC section, please contact the relevant City department.



ATTACHMENT C



City of Seattle

Department of Planning and Development

D. M. Sugimura, Director

Mark Knoll
P.O. Box 99187
Seattle, WA 98139

November 02, 2011

Re: 3012782

Dear Mr. Knoll:

Your Lot Boundary Adjustment has been APPROVED. Your initial payment at the time of application covered the first 5 hours of land use review. At this time no additional land use fees are owed.

After submittal of the final documents to DPD, you will be notified by a Routing Coordinator of the project fees owed prior to final sign off by the Department and recording with the King County Assessor's Office. Additional fees owed can be paid online by going to <http://www.seattle.gov/dpd/OnlineServices/> and clicking on "pay permit fees online", or at the PRC on the 20th floor, or by calling the Routing Coordinator assigned to your project.

Instructions for preparing and submitting final recording documents, paying fees, and securing issuance of your LBA permit are attached.

Sincerely,

Malli Anderson

Malli Anderson
Land Use Planner
(206) 233-3858
Malli.anderson@seattle.gov

Attachment: LBA fee payment and recording instructions
cc: file



City of Seattle

Department of Planning and Development

Diane M. Sugimura, Director

LOT BOUNDARY ADJUSTMENT - REVIEW CHECK LIST

MUP No.: 3012782

Address: 720 West Wheeler Street

(1) No additional lot, tract, parcel, site or division will be created by the proposed adjustment.

(2) No lot is created which contains insufficient area and dimensions to meet the minimum requirements of the zone.

Lots meet the minimum lot area requirements of Residential Small-Lot zone

23.43.008A; minimum lot area for one detached dwelling unit.

23.43.010A.3; minimum lot area for tandem housing.

23.43.012B.3; minimum lot area for cottage housing.

Lots meet the minimum lot area requirements of the Single Family zone.

Lot(s) meet the following exception to SF minimum lot area requirements

23.44.010B.1.a

23.44.010B.1.b

23.44.010B.2

23.44.010B.3

23.44.010B.4.a

23.44.010B.4.b

23.44.010B.4.c

23.44.010B.5.a

23.44.010B.5.b

23.44.010B.6

Lot(s) meet Director's Rule 13-97, Adjustment of boundaries of undersized lots.

No minimum lot size required.

- (3) No lot is created which does not have adequate drainage, water supply and sanitary sewage disposal, and access for vehicles, utilities and fire protection. Approvals have been received from the following (see file for specific comments):

- DPD - Drainage review
- DPD - Structural and Ordinance
- Seattle City Light
- Seattle Fire Department
- (Seattle Parks Department)
- Seattle Public Utilities

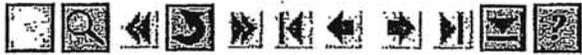
- (4) The LBA is consistent with applicable provisions of the Land Use Code.

- DPD - Zoning
Land Use Code development standards for the zone(s), Parking & Access requirements.

- (5) The LBA is consistent with applicable provisions of SMC Chapter 25.09, Regulations for Environmentally Critical Areas.

Completed By: Malli Anderson Date Prepared: 11-2-2011

ATTACHMENT D



Information retrieved December 28, 2011 2:01 PM

Seattle Municipal Code

Title 23 - LAND USE CODE
Subtitle II Platting Requirements
Chapter 23.28 - Lot Boundary Adjustments

SMC 23.28.030 Criteria for approval.

A. The Director shall approve an application for a lot boundary adjustment if it is determined that:

1. No additional lot, tract, parcel, site or division will be created by the proposed adjustment;

2. No lot is created which contains insufficient area and dimensions to meet the minimum requirements for development as calculated under the development standards of the zone in which the lots affected are situated, except as provided in Section 23.44.010, and under any applicable regulations for siting development on parcels with riparian corridors, shoreline habitat, shoreline habitat buffers, wetlands, wetland buffers or steep slopes in chapter 25.09. Any required nondisturbance area shall be legibly shown and described on the site plan, and a covenant shall be required as set out in Section 25.09.335;

3. No lot is created which does not have adequate drainage, water supply and sanitary sewage disposal, and access for vehicles, utilities and fire protection;

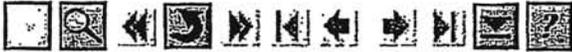
4. The lot boundary adjustment is consistent with applicable provisions of the Land Use Code, Title 23.

B. An application for a lot boundary adjustment on a parcel containing and environmentally critical area or buffer shall include the information described in Section 25.09:330, unless the Director determines that some of the information listed is not necessary for reviewing the application.

Legislative history/notes:

(Ord. 122050 Section 2, 2006; Ord. 116262 Section 4, 1992; Ord. 110570 Section 1 (part), 1982.)

ATTACHMENT E



Information retrieved December 28, 2011 12:08 PM

Seattle Municipal Code

*Title 23 - LAND USE CODE
Subtitle IV Administration
Division 1 Land Use Approval Procedures
Chapter 23.76 - Procedures for Master Use Permits and Council Land Use Decisions
Subchapter II Master Use Permits*

SMC 23.76.028 Type I and II Master Use Permit issuance.

A. When a Type I or II Master Use Permit is approved for issuance, the applicant shall be so notified.

1. Type I Master Use Permits. Type I Master Use Permits shall be approved for issuance at the time of the Director's decision that the application conforms to all applicable laws (Section 23.76.020).

2. Type II Master Use Permits. Except for Type II permits containing a shoreline component as defined in SMC Section 23.76.006 C2h, a Type II Master Use Permit may be approved for issuance on the day following expiration of the applicable City of Seattle administrative appeal period or, if appealed, on the fourth day following a final City of Seattle administrative appeal decision to grant or conditionally grant the permit. Type II Master Use Permits containing a shoreline component may be issued pursuant to SMC Section 23.60.072. Master Use Permits shall not be issued to the applicant until all outstanding fees are paid.

B. When a Master Use Permit is approved for issuance according to subsection A, and a condition of approval requires revisions of the Master Use Permit plans, the revised documents shall be submitted within sixty (60) days of the date the permit is approved for issuance. The Director may extend the period for submittal of the revised documents if it is determined that there are good reasons for the delay which are satisfactory to the Director, or if a different schedule is agreed upon.

C. Once a Master Use Permit is approved for issuance according to subsection A, and any required revisions have been submitted and approved according to subsection B, the applicant shall pay any required fees and pick up the Master Use Permit within sixty (60) days of notice that the permit is ready to be issued. Failure to pick up the permit within sixty (60) days may result in a written notice of intent to cancel. If the Master Use Permit is not picked up within thirty (30) days from the date of written notice of intent to cancel, the approval shall be revoked and the Master Use Permit

application shall be canceled. When a Master Use Permit is for a project vested to prior Land Use Code provisions because of an associated building permit application, and the project does not conform with the codes in effect at the time it is ready to issue, then no notice that the Master Use Permit is ready to issue shall be given until the building permit associated with the project is also ready to issue.

D. In no case may a Master Use Permit be issued beyond eighteen (18) months from the date the project is approved for issuance.

Legislative history/notes:

(Ord. 121112 Section 2, 2003; Ord. 119239 Section 36, 1998; Ord. 118012 Section 38, 1996; Ord. 117570 Section 22, 1995; Ord. 115751 Section 3, 1991; Ord. 112522 Section 2(part), 1985.)

Cases: Under an earlier ordinance, no rights may vest where either the application submitted or the permit issued fails to conform to the zoning or building code.. *Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d 475, 513 P.2d 36 (1973).

A hotel is distinguished from a home for the retired in that the latter provides domiciliary care for persons who are unable or do not desire to provide such care for themselves. *State ex rel. Meany Hotel, Inc. v. Seattle*, 66 Wn.2d 329, 402 P.2d 486 (1965).

A building permit issued in violation of law or under a mistake of fact confers no rights. *Steele v. Queen City Broadcasting Co.*, 54 Wn.2d 402, 341 P.2d 499 (1950), *Nolan v. Blackwell*, 123 Wash. 504, 212 P. 1048 (1923).

Definitions of terms used in Land Use Code.

New legislation may amend this section!

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Search for recently approved legislation referencing this section. (Searches for legislation approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

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For research assistance, contact the Seattle City Clerk's Office at (206) 684-8344, or by e-mail, clerk@seattle.gov.

ATTACHMENT F



Information retrieved December 28, 2011 12:30 PM

Seattle Municipal Code

Title 23 - LAND USE CODE

Subtitle IV Administration

Division 1 Land Use Approval Procedures

Chapter 23.76 - Procedures for Master Use Permits and Council Land Use Decisions

Subchapter II Master Use Permits

SMC 23.76.020 Director's decisions.

A. Master Use Permit Review Criteria. The Director shall grant, deny, or conditionally grant approval of a Type II decision based on the applicant's compliance with the City's SEPA Policies pursuant to SMC Section 25.05.660, and with the applicable substantive requirements of the Seattle Municipal Code which are in effect at the time the Director issues a decision. If an EIS is required, the application shall be subject to only those SEPA Policies in effect when the Draft EIS is issued. The Director may also impose conditions in order to mitigate adverse environmental impacts associated with the construction process.

B. Timing of Decisions Subject to Environmental Review.

1. If an EIS has been required, the Director's decision shall not be issued until at least seven (7) days after publication of the final EIS, as provided by Chapter 25.05, SEPA Policies and Procedures.

2. If no EIS is required, the Director's decision shall include issuance of a DNS for the project if not previously issued pursuant to Section 25.05.310 C2.

C. Notice of Decisions.

1. Type I. No notice of decision is required for Type I decisions.

2. Type II. The Director shall provide notice of all Type II decisions as follows:

a. A list of all Type II decisions shall be compiled and published in the City official newspaper within seven (7) days of the date the decision is made. This list and the date of its publication shall also be posted in a conspicuous place in the Department and shall be included in the Land Use Information Bulletin. Notice shall also be mailed to the applicant and to

<http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CODE&s1=23.76...> 12/28/2011

interested persons who have requested specific notice in a timely manner or who have submitted substantive comments on the proposal, and shall be submitted in a timely manner to at least one (1) community newspaper in the area affected by the proposal.

b. DNSs shall also be filed with the SEPA Public Information Center.

c. If the Director's decision includes a mitigated DNS or other DNS requiring a fourteen (14) day comment period pursuant to SMC Chapter 25.05, Environmental Policies and Procedures, the notice of decision shall include notice of the comment period. The Director shall distribute copies of the DNS as required by SMC Section 25.05.340.

d. Any shoreline decision in a Master Use Permit shall be filed with the Department of Ecology according to the requirements contained in WAC 173-27-130. A shoreline decision on limited utility extensions and bulkheads subject to Section 23.60.065 shall be issued within twenty-one (21) days of the last day of the comment period as specified in that section.

e. The notice of the Director's decision shall state the nature of the applicant's proposal, a description sufficient to locate the property, and the decision of the Director. The notice shall also state that the decision is subject to appeal and shall describe the appropriate appeal procedure.

Legislative history/notes:

(Ord. 121477 Section 48, 2004; Ord. 119096 Section 7, 1998; Ord. 118794 Section 49, 1997; Ord. 118012 Section 33, 1996; Ord. 112522 Section 2(part), 1985.)

Definitions of terms used in Land Use Code.

New legislation may amend this section!

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Search for recently approved legislation referencing this section. (Searches for legislation approved within the past six months, which may not yet be incorporated into the SMC. See the legislative history for each section to confirm whether an ordinance is reflected.)

Search for proposed legislation that refers to this section. (Searches for Council Bills introduced this year and not yet passed.)

Note: The above searches are provided to assist in research, but they are not guaranteed to capture all relevant legislation. Search directly on the Council Bills and Ordinances Index for the most comprehensive results.

ATTACHMENT G

LOT BOUNDARY ADJUSTMENT NUMBER 3012782

GRANTOR (Owner): DL DALTON, LLC CONTACT PERSON: DAN DUFFUS
SOLEIL HOMES, LLC 300 RUFEN ANNE AVE N #388
GRANTEE: CITY OF SEATTLE SEATTLE, WA 98108
KING COUNTY, WASHINGTON 206-282-9270
27 STAR ADDITION 2-88
27-28 HAGAN'S EXTENSION TO STAR ADD. 11-2102
LOTS BLOCK SUBDIVISION VOL. NO.
(SECTION) (TOWNSHIP) (RANGES)

FOR COMPLETE LEGAL DESCRIPTIONS, SEE PAGE 1 OF 2
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT #299180-0045, 299180-0047

REFERENCE NUMBERS FOR RELATED PROJECTS:

DECLARATION:

We the undersigned, owner(s) in fee simple
and contract purchaser(s) of the land herein described
do hereby make a lot boundary adjustment thereof, pursuant to
RCW 58.17.040(a) and declare this lot boundary adjustment to be
the graphic representation of same, and that said lot boundary
adjustment is made with free consent and in accordance with the
desires of the owner(s).
In Witness whereof we have set our hands and seals.

NAME: DAN DUFFUS

STATE OF WASHINGTON, ss.
County of King

On this day personally appeared before me
Daniel Duffus & Andrew J. Duffus
to me known to be the individuals described in and who executed
the within and foregoing instrument and acknowledged that
they signed the same as their free and voluntary act, and
deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 10th day
of November, 2011.



NOTICE PUBLIC IN and for the
State of Washington, residing
at Seattle, WA,
Commission Expires 06/30/12

APPROVAL
CITY OF SEATTLE
DEPARTMENT OF PLANNING & DEVELOPMENT
DIANE SUGIMURA, DIRECTOR

Examined and approved this 10th day of
November, 2011.
Mellie Anderson, Director

(Note: Approval of this lot boundary adjustment by the Director
of the Department of Planning & Development under
Chapter 23.28 of the Seattle Municipal Code, as amended,
is not to be construed as satisfaction of
any other applicable legislation or regulations.)

KING COUNTY DEPARTMENT OF ASSESSMENTS
Examined and approved this 16th day of
November, 2011.
Wood Hava, Assessor
Russell G. Liddle, Deputy Assessor

PARCEL A (EXISTING)

THE WEST 83 FEET OF LOTS 27 AND 28, HAGAN'S EXTENSION
TO STAR ADDITION TO THE CITY OF SEATTLE ACCORDING TO
THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE
102, RECORDS OF KING COUNTY, WASHINGTON;

AND

LOT 27, BLOCK 2, STAR ADDITION TO THE CITY OF SEATTLE
ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF
PLATS, PAGE 88, RECORDS OF KING COUNTY, WASHINGTON;

CONTAINING IN ALL 5,005.4 SQUARE FEET.

PARCEL B (EXISTING)

THE EAST 37 FEET OF LOTS 27 AND 28, HAGAN'S EXTENSION
TO STAR ADDITION TO THE CITY OF SEATTLE ACCORDING TO
THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE
102, RECORDS OF KING COUNTY, WASHINGTON;

CONTAINING IN ALL 2,230.5 SQUARE FEET.

PARCEL A (PROPOSED)

THE WEST 83 FEET OF LOTS 27 AND 28, HAGAN'S EXTENSION
TO STAR ADDITION TO THE CITY OF SEATTLE ACCORDING TO
THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE
102, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 27, BLOCK 2, STAR ADDITION TO THE CITY
OF SEATTLE ACCORDING TO THE PLAT THEREOF, RECORDED IN
VOLUME 2 OF PLATS, PAGE 88, RECORDS OF KING COUNTY,
WASHINGTON;

EXCEPT THE EAST 1.39 FEET OF SAID LOT 27, HAGAN'S
EXTENSION TO STAR ADDITION, AND THE EAST 1.39 FEET OF
SAID LOT 27, BLOCK 2, STAR ADDITION THEREOF;

ALSO TOGETHER WITH THAT PORTION OF SAID LOT 27, HAGAN'S
EXTENSION TO STAR ADDITION, AND THAT PORTION OF SAID
LOT 27, BLOCK 2, STAR ADDITION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 27,
HAGAN'S EXTENSION TO STAR ADDITION;
THENCE S 00°00'08" E ALONG THE EAST MARGIN OF SAID LOT
27, HAGAN'S EXTENSION TO STAR ADDITION, 1.07 FEET;
THENCE S 89°21'20" W, 38.39 FEET;
THENCE N 00°00'09" W, 1.12 FEET TO THE NORTH MARGIN OF
SAID LOT 27, BLOCK 2, STAR ADDITION;
THENCE N 89°25'35" E ALONG SAID MARGIN, AND THE NORTH
MARGIN OF SAID LOT 27, HAGAN'S EXTENSION TO STAR
ADDITION, 38.39 FEET TO THE POINT OF BEGINNING;

CONTAINING IN ALL 5,005.4 SQUARE FEET.

PARCEL B (PROPOSED)

THE EAST 37 FEET OF LOTS 27 AND 28, HAGAN'S EXTENSION
TO STAR ADDITION TO THE CITY OF SEATTLE ACCORDING TO
THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE
102, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THE EAST 1.39 FEET OF THE WEST 83 FEET OF
SAID LOT 27, HAGAN'S EXTENSION TO STAR ADDITION;

ALSO TOGETHER WITH THE EAST 1.39 FEET OF LOT 27, BLOCK
2, STAR ADDITION TO THE CITY OF SEATTLE ACCORDING TO
THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE
88, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF SAID LOT 27, HAGAN'S EXTENSION
TO STAR ADDITION, AND THAT PORTION OF SAID LOT 27,
BLOCK 2, STAR ADDITION, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 27,
HAGAN'S EXTENSION TO STAR ADDITION;
THENCE S 00°00'08" E ALONG THE EAST MARGIN OF SAID LOT
27, HAGAN'S EXTENSION TO STAR ADDITION, 1.07 FEET;
THENCE S 89°21'20" W, 38.39 FEET;
THENCE N 00°00'08" W, 1.12 FEET TO THE NORTH MARGIN OF
SAID LOT 27, BLOCK 2, STAR ADDITION;
THENCE N 89°25'35" E ALONG SAID MARGIN, AND THE NORTH
MARGIN OF SAID LOT 27, HAGAN'S EXTENSION TO STAR
ADDITION, 38.39 FEET TO THE POINT OF BEGINNING;

CONTAINING IN ALL 2,230.5 SQUARE FEET.

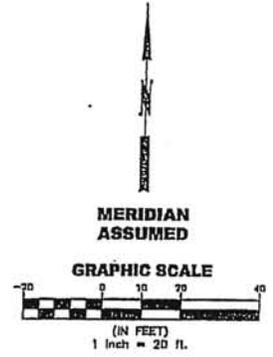
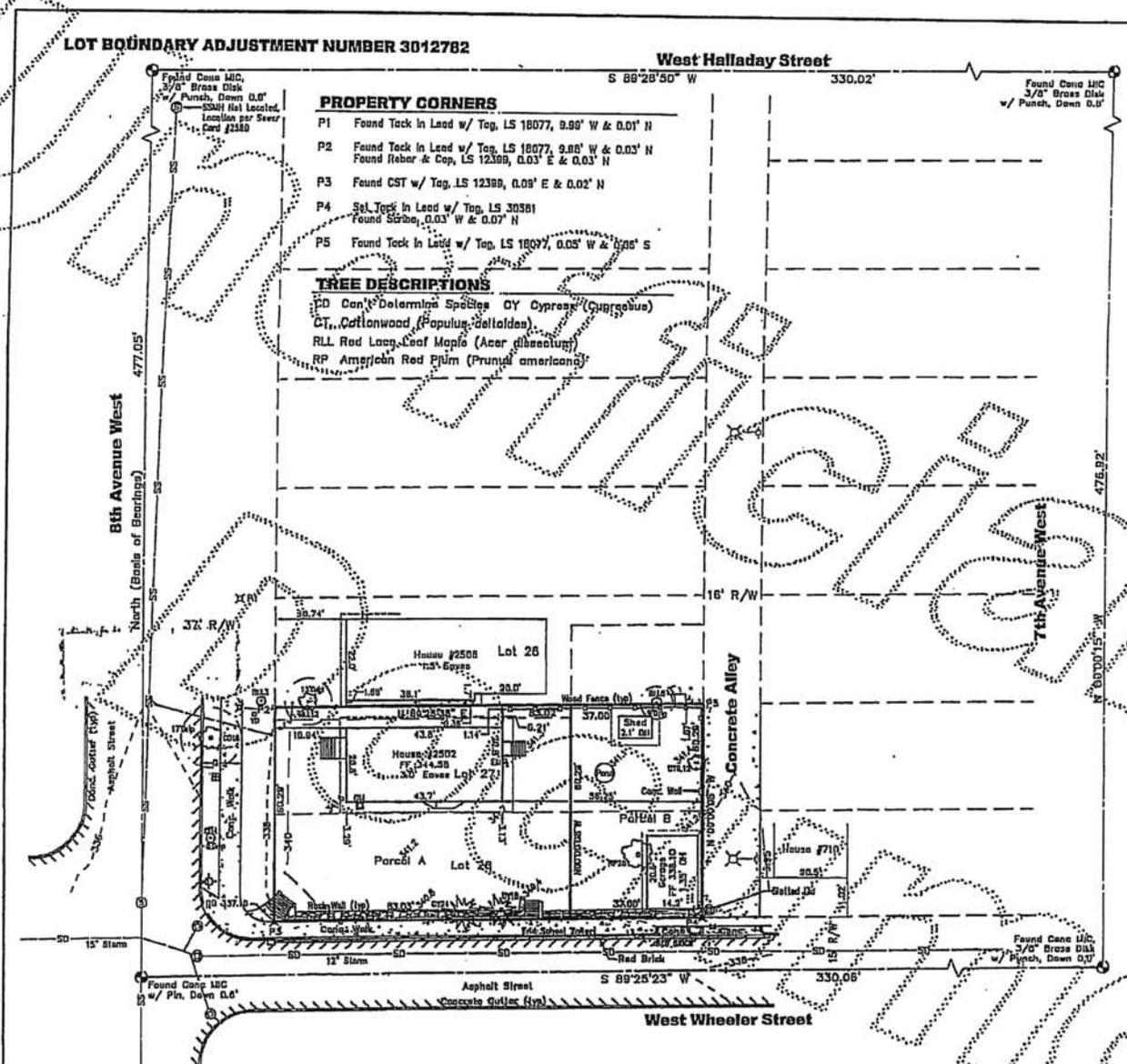
20111117900003 CERTIFICATE
I, BRENT ERLE, Surveyor, do hereby certify that this map is a true and correct copy of the original map as shown to me by the person who requested the map.
Brent Erle, Auditor
Deputy Auditor

SURVEYOR'S CERTIFICATE
This map represents a survey made by me or
under my direction in conformance with the
requirements of the Survey Recording Act of
the request of DL DALTON, LLC/SOLEIL HOMES, LLC
in OCTOBER, 2011
Certificate Number 30581



RECORD OF SURVEY
DL Dalton LLC
Soleil Homes LLC
2502 8th Avenue West
Seattle, WA 98119

EMERALD LAND SURVEYING, INC.
PO BOX 13694 MILL CREEK, WA 98082
PH. (425) 359-7198
Email: emeraldpls@aol.com
SURVEY IN S.E. 1/4, N.W. 1/4,
SEC. 24, T. 25N., R. 3E.
DWN. BY: BLE DATE: 11/2/11 JOB NO. 11540
CHK. BY: BLE SCALE: 1" = 20' SHEET OF 4



SURVEY NOTES

INSTRUMENT USED: SOKKIA SET 5 EDM
METHOD USED: FIELD TRAVERSE

APPROXIMATE POINT ACCURACY: ±0.05'

SURVEY MEETS OR EXCEEDS STATE STANDARDS PER WAC 332-130-090.

MONUMENTS SHOWN HEREON WERE VISITED ON APRIL 29, 2011.

THE INFORMATION SHOWN ON THIS MAP REPRESENTS THE RESULTS OF A SURVEY MADE ON THE INDICATED DATE AND CAN ONLY BE CONSIDERED AS THE GENERAL EXISTING CONDITION AT THAT TIME.

NO EASEMENTS, RESTRICTIONS OR RESERVATION OF RECORD WHICH WOULD BE DISCLOSED BY A TITLE REPORT ARE SHOWN.

VERTICAL DATUM - NAVD 1988
CONTOUR INTERVAL - 2 FEET

EMERALD LAND SURVEYING, INC.
PO BOX 13694 MILL CREEK, WA 98082
PH. (425) 359-7198
Email: emeraldpls@aol.com

RECORDING CERTIFICATE

20111117900003

143.55

REC. OF COUNTY CLERK
11/17/2011 1:12 PM
KING COUNTY, WA

SURVEYOR'S CERTIFICATE

This map represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of DL DALTON, LLC/SOLEIL HOMES, LLC in OCTOBER, 2011

Certificate Number 30581



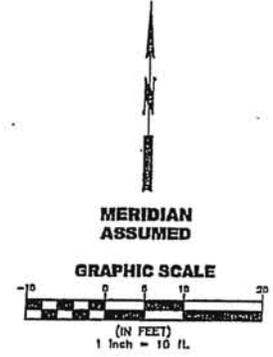
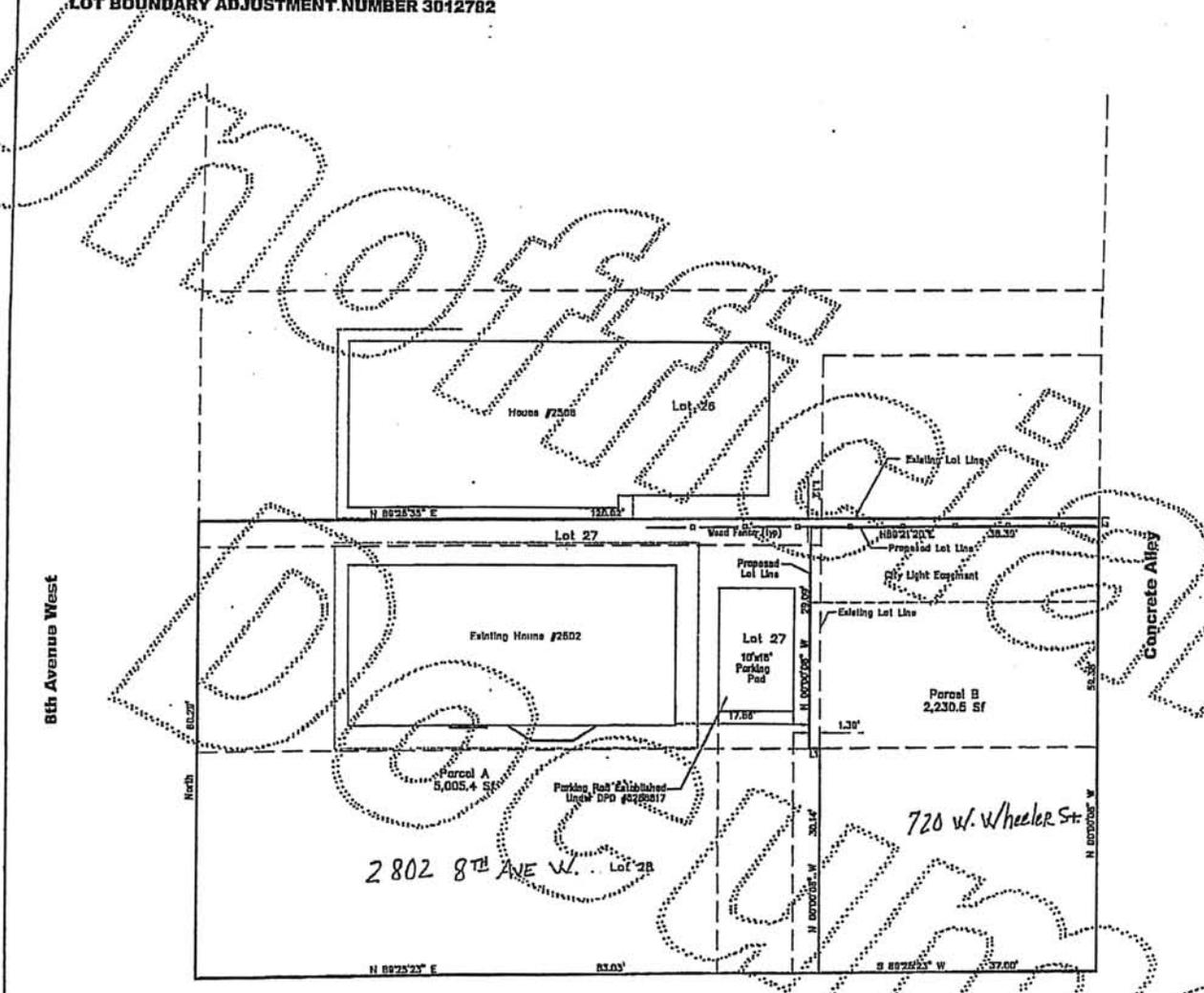
RECORD OF SURVEY

DL Dalton LLC
Soleil Homes LLC
2502 8th Avenue West
Seattle, WA 98119

SURVEY IN S.E. 1/4, N.W. 1/4, SEC. 24, T. 25N., R. 3E.		
DWN. BY: BLE	DATE: 11/2/11	JOB NO. 11540
CHK. BY: BLE	SCALE: 1" = 20'	SHEET 2 OF 4

284/151

LOT BOUNDARY ADJUSTMENT NUMBER 3012702



LINE TABLE		
LINE	LENGTH	BEARING
L1	1.30	N89°25'20"E
L2	1.07	N00°00'00"W

West Wheeler Street

EMERALD LAND SURVEYING, INC.
 PO BOX 12694 MILL CREEK, WA. 98082
 PH. (425) 359-7188
 Email: emeraldpls@aol.com

RECORDING CERTIFICATE

20111117900003

DEPT OF COUNTY CLERK
 143.00
 11172511 0127
 KING COUNTY, WA

ays _____
 County, _____
 3LE _____

SURVEYOR'S CERTIFICATE

This map represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of DL DALTON, LLC/SOLEIL HOMES, LLC in OCTOBER, 2011

Certificate Number 30581



RECORD OF SURVEY

DL Dalton LLC
 Soleil Homes LLC
 2502 8th Avenue West
 Seattle, WA .98119

SURVEY IN S.E. 1/4, N.W. 1/4,
 SEC. 24, T. 25N., R. 3E.

DWN. BY: BLE	DATE: 11/2/13	JOB NO. 11540
CHK. BY: BLE	SCALE: 1" = 10'	SHEET 3 OF 4

LOT BOUNDARY ADJUSTMENT NUMBER 3012782

EXHIBIT "A" TO LOT BOUNDARY ADJUSTMENT 3012782

EASEMENT (Overhead and Underground)
P.M. #250324-2-017

THIS EASEMENT GRANTS to the City of Seattle (hereafter referred to as Grantee), its successors and assigns, the right, privilege and authority to install, construct, erect, alter, improve, repair, energize, operate and maintain electric overhead and underground distribution facilities at depths not exceeding 15 feet, which consist of poles with braces, guys and anchors, crossarms, transformers, ducts, vaults, manholes, cabinets, containers, conduits, wires and other necessary or convenient appurtenances to make said underground and overhead installations an integrated electric system. All such electric system is to be located across, over, upon and under the following described lands and premises situated in the County of King, State of Washington, to-wit:

That portion of the west 83 feet of Lot 27, Hagan's Extension to Star Addition to the City of Seattle according to the plat recorded in Volume 11 of Plats, page 102, records of King County, Washington;

Together with Lot 27, Block 2, Star Addition to the City of Seattle according to the plat recorded in Volume 2 of Plats, page 88, records of King County, Washington;

Also together with that portion of said Lot 27, Hagan's Extension to Star Addition, and that portion of said Lot 27, Block 2, Star Addition;

Also together with the east 37 feet of Lot 27, Hagan's Extension to Star Addition to the City of Seattle according to the plat recorded in Volume 11 of Plats, page 102, records of King County, Washington;

Together with the east 1.39 feet of the west 83 feet of said Lot 27, Hagan's Extension to Star, described as follows:

Beginning at the northeast corner of said Lot 27, Hagan's Extension to Star Addition;
thence South 00°00'00" East along the east margin of said Lot 27, Hagan's Extension to Star Addition, 10.00 feet to the TRUE POINT OF BEGINNING;
thence continuing South 00°00'00" East along the east margin of said Lot 27, Hagan's Extension to Star Addition, 10.00 feet;
thence South 89°21'20" West, 38.39 feet;
thence North 00°00'00" West, 10.00 feet;
thence North 89°21'20" East, 38.39 feet to the True Point of Beginning.

(Being the north 10.00 feet of Parcel B, City of Seattle Lot Boundary Adjustment No. 3012782.)

Together with the right at all times to the Grantee, its successors and assigns, of ingress to and egress from said lands across adjacent lands of the Grantor abutting the described easement area for the purpose of installing, constructing, reconstructing, repairing, renewing, altering, changing, patrolling, energizing and operating said electric system, and the right at any time to remove all or any part of said electric system from said lands.

Also the right to the Grantor, its successors and assigns, at all times to cut and trim brush, trees or other plants standing or growing upon said lands or adjacent lands of the Grantor which, in the opinion of the Grantee, interfere with the maintenance or operation of the system, or constitute a menace or danger to said electric system.

It is further covenanted and agreed that no structure or fire hazards will be erected or permitted within the above described easement area without prior written approval from the Grantee, its successors and assigns; that no digging will be done or permitted within the easement area which will in any manner disturb the facilities or their solidity or unearth any portion thereof; and that no blasting or discharge of any explosives will be permitted within fifty (50) feet of said lines and appurtenances.

The City of Seattle is to be responsible, as provided by law, for any damage through their negligence in the construction, maintenance and operation of said electric system across, over, upon and under the property granted in this easement or adjacent land thereto.

The rights, title, privileges and authority hereby granted shall continue and be in force until such time as the Grantee, its successors and assigns, shall permanently remove said poles, wires and appurtenances from said lands or shall otherwise permanently abandon said electric system, at which time all such rights, title, privileges and authority hereby granted shall terminate.

RECORDING CERTIFICATE



20111117900003
143.00
DEPT. OF CHIEF CLERK
1722819 13137
KING COUNTY, WA

SURVEYOR'S CERTIFICATE

This map represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of DL DALTON, LLC/SOLEIL HOMES, LLC in OCTOBER, 2011

Certificate Number 30581



RECORD OF SURVEY

DL Dalton LLC
Soleil Homes LLC
2502 8th Avenue West
Seattle, WA 98119

EMERALD LAND SURVEYING, INC.

PO BOX 13694 MILL CREEK, WA. 98082
PH. (425) 389-7198
Email: emeraldpls@aol.com

SURVEY IN S.E. 1/4, N.W. 1/4,
SEC. 24, T. 25N., R. 3E.

DWN. BY: BLE	DATE: 11/2/11	JOB NO. 11540
CHK. BY: BLE	SCALE: 1" = 20'	SHEET OF 4

ATTACHMENT H

Seattle Permits

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

Application Requirements for Lot Boundary Adjustments

Updated October 14, 2009

Washington State law allows adjustments of boundary lines if certain conditions are met. Applications for lot boundary adjustments in Seattle are filed by appointment with the Department of Planning and Development (DPD).

Lot boundary adjustments must satisfy public concerns of health, safety and welfare as detailed in Seattle's Land Use Code (Chapter 23.28 of the Seattle Municipal Code or SMC). Additional information about when the lot boundary adjustment procedure may and may not be used is provided in DPD Director's Rules 10-87 and 12-87.

Seattle codes and regulations are available on the DPD website at www.seattle.gov/dpd/codes or from the DPD Public Resource Center (PRC), located on the 20th floor of Seattle Municipal Tower, 700 Fifth Ave., (206) 684-8467.

Definition

RCW 58.17.040 (6) describes a boundary line adjustment as follows:

A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

Application Instructions

1. **For assistance on fees and procedural requirements** related to your application, please talk with staff at the DPD PRC (see address and phone to the left).
2. **Requesting an Appointment**—Lot boundary applications are filed by a scheduled appointment at the DPD Applicant Services Center, located on the 20th floor of Seattle Municipal Tower, 700 Fifth Ave. Appointments are scheduled by calling (206) 684-8850. In order to schedule an intake appointment you must:
 - a. Receive a DPD **project number**. In order to get a project number you must submit:
 - A Preliminary Application Form (PAF)
3. **A 18"x24" survey may be required** by DPD for a lot boundary adjustment application (per SMC Section 23.76.010D6) to obtain information that cannot otherwise be verified, such as when aerial photos show structures encroaching on lot lines.

The survey should be prepared by/or under the supervision of a Washington state licensed land surveyor who certifies on the plat that it is a true and correct representation of the lands actually surveyed.

Your surveyor should refer to the standard survey example on page 6. The full size (18"x24") survey template is available online in AUTOCAD format at www.seattle.gov/dpd. Go to the "Publications" menu and choose "Client Assistance Memos." The file is listed as a supporting file to CAM 213B called "Lot Boundary Adjustment."

4. **If the survey requirement is waived, the applicant may use the form containing the 8½" X 14" template, which is available online. To find the form, just go to Client Assistance Memo website, click on CAM 213B and download the file listed as a supporting file to CAM 213B called "Lot Boundary Adjustment Form." This form may also be obtained by contacting**



- the **Public Resource Center at (206) 684-8467 or prc@seattle.gov**. The information provided by the applicant will be presumed to be accurate, including the location of property lines relative to any improvement on the site or adjacent improvements on abutting properties involved in the lot boundary adjustment. The applicant requesting the waiver will complete the 8½" X 14" document format and proceed with normal application submittal. If the proposed lot boundary adjustment, as described, is technically accurate (see the attached checklist) and does not violate standards in the Land Use Code, then the survey waiver may be granted.
5. **The application package shall include a plat, legal descriptions, owner's name(s), and contact person.** The plat must accurately show the existing structures, eaves, fences, accessory structures, easements, street improvements and other site development to illustrate that the proposed parcels will meet all required development standards. Please use the attached checklist and sample as guides to complete the package.
 6. **Fees are charged in accordance with the fee schedule** established annually by the City Council in the Permit Fee Ordinance. Fee deposits are collected at time of application include the King County recording fee. Once analysis or research begins on an application, none of the fee is refundable, except the recording fee. There may also be charges at the end of the process that accrued during the actual review. These fees could include Drainage, geo-technical (ECA), Land Use and/or ordinance/structural reviews.
 7. **Submit eight (8) copies of the application package** for review. The documents are not required to be notarized for application intake.

Review Process

When reviewing the application, DPD uses the following criteria to determine whether to grant or deny a lot boundary adjustment:

1. No additional lot, tract, parcel, site or division will be created by the proposed adjustment.
2. No lot is created which contains insufficient area and dimensions to meet the minimum requirements for development as calculated under the development standards of the zone in which the lots affected are situated, except as provided in SMC Section 23.44.010 and under any applicable regulations for siting development on parcels with

riparian corridors, shoreline habitat, shoreline habitat buffers, wetlands, wetland buffers or steep slopes in chapter 25.09. Any required nondisturbance area shall be legibly shown and described on the site plan, and a covenant shall be required as set out in Section 25.09.335.

3. No lot is created which does not have adequate drainage, water supply and sanitary sewage disposal, and access for vehicles, utilities and fire protection.
4. An application for a lot boundary adjustment on a parcel containing an environmentally critical area or buffer shall include the information described in Section 25.09.330, unless the Director determines that some of the information listed is not necessary for reviewing the application.

The application is distributed internally and to Seattle Public Utilities, Seattle Fire Department and Seattle City Light for comment.

Approval Process

If the proposed lot boundary adjustment meets the criteria mentioned above, the application will be approved. If corrections to the lot boundary adjustment application package are necessary, DPD will send the applicant a notice explaining the corrections needed.

The applicant is then responsible for: 1) making the corrections and verifying their accuracy prior to final DPD approval, and 2) submitting new plans to DPD.

Recording and Permit Issuance

A letter documenting the Director's Decision and outlining the recording process will be sent to the designated contact person.

If the 18" X 24" survey format is required (as detailed on page 1), three (3) signed and notarized paper copies of the completed/corrected survey are required. (NOTE: A mylar is no longer required for recording.)

DPD will record the lot boundary adjustment with King County Division of Records and Elections and file it with the King County Assessor's office.

After the lot boundary adjustment is recorded, the permit for this platting action will be issued. A lot boundary adjustment permit must be issued before a building permit can be issued for new structures on any newly configured lots.

Access to Information

Links to electronic versions of DPD Client Assistance Memos (CAMs), Director's Rules and Forms are available on the "Publications" page of our website at www.seattle.gov/dpd/publications. 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.

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.

DEPARTMENT OF PLANNING AND DEVELOPMENT

Checklist for Lot Boundary Application Intake

Applicant/Surveyor, please use the following checklist for your lot boundary adjustment application. Items numbered (1) through (9) are keyed to the attached sample.

(1) LOT BOUNDARY ADJUSTMENT PROJECT NUMBER

A project number will be generated by staff when the application appointment is scheduled.

(2) GRANTOR & GRANTEE

Grantor: List all of the owners of the properties to be adjusted. Grantee: City of Seattle, King County, WA

(3) CONTACT PERSON

List the person who will be DPD's contact for corrections and correspondence. Provide a mailing address and a telephone number. Provide e-mail and/or internet address if applicable.

(4) ABBREVIATED LEGAL DESCRIPTION

Insert the short legal description using Lots, Block, Subdivision, Vol. and Page or Section, Township and Range.

(5) ASSESSOR'S PROPERTY TAX PARCEL NUMBERS (ACCOUNT NO.)

Provide the 10 or 12 digit code(s) that identifies the parcel(s) of all lots to be adjusted.

(6) SCALED DRAWING (SURVEY) OF THE SITES TO BE ADJUSTED

Use standard cartographic practice. All line lengths should be to scale and dimensioned. Use pen weight and/or lettering style for clear differentiation of lines. The plat should include:

- North arrow and references
- Scale notation (e.g., 1" = 50') and bar scale (see sample)
- Existing lot lines (lighter pen weight, dashed) - Show the entire property of each of the sites included in the adjustment
- Proposed lot lines (heavier pen weight, solid)
- Bearings (if metes and bounds) and distances of lot lines
- Width of rights-of-way and condition (paved, curb/gutter/sidewalk) of street/alley
- Parcels identified (use Parcel A, Parcel B, etc.)
- Lot area in square feet of each parcel
- Relationship of property to established street monuments
- Dimensions of easements/turnarounds (use lighter pen weight and different lettering)
- Dimensions and location of driveways, curbcuts, and off-street parking
- Dimensions of all structures and distances to the property lines
- Dimensions of eaves and other architectural features
- Indicate proposed removal of structures
- Grading plans if vehicle access to lots exceeds 20% grade
- Address of existing structures
- Location of water and sewer lines in the street rights-of-way.
- Location, size and species (common name) of all trees greater than 6" in diameter measured 4-1/2 feet above the ground.

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__If your LBA is located in one or more of the ECAs or buffers in the bulleted list below*, then the ECA covenant and ECA permanent markers will need to be shown on your LBA.

- steep slope
- landslide-prone areas
- riparian corridors
- wetlands
- shoreline habitat
- fish and wildlife habitat

(7) DELINEATE ALL APPLICABLE ECAS ON SITE

Additional documentation, such as a wetland report, and soils report, may be required.

(8) LEGAL DESCRIPTIONS

Provide full legal descriptions of the existing parcels.

Provide full legal descriptions of each new parcel. Identify parcels by letters A, B, etc. If this lot boundary adjustment adjusts a parcel of a previous short plat or LBA, provide the complete legal description of the original parcel with a reference to the short plat or lot boundary adjustment parcel (AKA Parcel C of Short Subdivision #890_____, recorded under K.C. Recording # 89XXXX-XXXX). Also include recorded easements as part of the legals.

(9) SURVEYOR'S CERTIFICATE

The surveyor will complete these two boxes with date, certificate number, signature, and surveyor stamp/address.

(10) REFERENCE BOX

Complete the appropriate items in the box.

(11) EVIDENCE OF OWNERSHIP OR AUTHORIZATION FROM THE PROPERTY OWNER TO APPLY

If owner's agent, provide a written authorization from the owner to allow the agent to act as representative to apply for this project action.

(12) SMC 23.44.010 (B)(3) [The "75-80 Rule"]

The "75-80 rule" — the proposed lots would each be 75% of the minimum lot size of the zone and would also be 80% of the average of the area of the lots on the same block face. If the proposed parcels meet the requirements of the "75-80 Rule" then a copy of the King County Assessor's map and your calculations to verify that the lots meet the standards are required. See a Land Use Planner in the Applicant Services Center (ASC) for more information.

(13) A SIGNED STATEMENT OF FINANCIAL RESPONSIBILITY BY THE APPLICANT AND/OR OWNER

(See Director's Rule 5-2003)

(14) REFER TO SMC 25.09.330 FOR APPLICATION

(Please contact a DPD land use planner for guidance and a determination of specific information required in the survey, which includes a topographical survey.)

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.

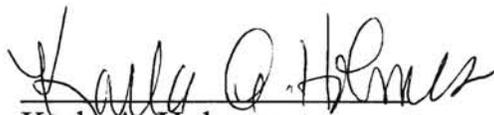
CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of this document to following parties, in the manner indicated below:

Patrick J. Schneider
Foster Pepper PLLC
1111 Third Ave., Suite 3400
Seattle, WA 98101
Via Messenger

Patrick Downs
Assistant City Attorney
Seattle City Attorney's Office
600 – 4th Ave., 4th Floor
Seattle, WA 98124
Via Messenger

DATED this 5th day of September, 2012, at Seattle, Washington.


Karla A. Holmes

**APPENDIX *B* TO THE BRIEF OF ADDITIONAL
RESPONDENTS**

**SEATTLE DEPARTMENT OF PLANNING AND
DEVELOPMENT'S CLIENT ASSISTANCE MEMO**

Seattle Permits

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

DPD Public Records

Updated November 8, 2010

As a public agency, DPD maintains a variety of documents that are available for public inspection and copying. For persons interested in inspecting or copying public documents maintained by the department, the basic organization of DPD is given below, along with a brief description of the records maintained by each DPD service center.

Documents related to development projects are generally indexed or referenced by address. Applicable addresses can be identified from the address posted on the premises or from DPD's zoning maps and its computer-verified catalogue of established addresses. For additional information on conducting address research, please refer to DPD CAM 233, *Sources for Property Information*.

Certain documents and information are deemed by State statute to be exempt from public disclosure, generally on the grounds that disclosure would violate personal privacy or vital governmental interests. Appendix A to this memo sets forth the specific categories of documents or information exempted from disclosure by state law.

Requests for documents or information should be specific and should be made to the reception staff in the area that maintains the requested records. Requests for more than a small number of documents should be made in writing. Documents will be available for inspection and copying during the City's regular business hours.

If the information requested is not available through the reception staff at the number(s) listed in this CAM, contact the Enforcement Facilitation group at (206) 684-8880. DPD will respond to all requests as promptly as possible; however, in some instances, the Department may require several days to gather the requested documents.

A photocopying charge will be imposed for all copies

of documents requested. The charge is \$0.75 per page on regular or legal sized paper. Copies of plan sheets are available from the DPD Public Resource Center (PRC) for \$5.00 per page, with a turnaround time of approximately 48 hours. The PRC is located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave., (206) 684-8467.

Microfilm Library

Seattle Municipal Tower, 20th floor, 700 Fifth Ave.
(206) 233-5180

DPD's Microfilm Library is located in the Public Resource Center.

The following documents or files are maintained in microfilm form by address, approximately 4-6 weeks after a permit has been issued:

- Boiler
- Certificates of Occupancy
- Construction plans* and permits
- Electrical plans and permits
- Elevator
- Furnace
- Mechanical permits
- Refrigeration
- Sign

* *Original plans for single family and multifamily structures built before 1974 are not available.*

All of the following documents or files are maintained in microfilm form by address, approximately 24 months after application is made:

- Council Land Use files, including rezones, subdivisions, Council conditional uses, and Major Institution Master Plans
- Master Use Permit files, including variances, special exceptions, shorelines permits, conditional uses, and short plats
- Threshold environmental determinations

www.seattle.gov/dpd

City of Seattle
Department of Planning & Development

700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8600

The Microfilm Library provides 11" x 17" paper copies of plans for \$1.50 per sheet, and permits for \$0.75 per sheet. Diazo (microfiche) copies are available for \$5 each.

Electronic Records

*Seattle Municipal Tower, 19th floor, 700 Fifth Ave.
(206) 684-8880*

DPD also maintains current application information, application review information, project history, code enforcement information and a variety of other materials in computer records format. The computer data are generally accessed and indexed either by case number, project number or street address. Limited access to the DPD Permit Tracking System (PTS) is available to customers online for information on specific projects and addresses—including a current violation database—at www.seattle.gov/dpd/permits.

Accounting & Human Resources

Seattle Municipal Tower, 18th floor, 700 Fifth Ave.

- Accounting files and records—indexed by various methods
- Accounting Procedures, Guidelines, and Task Outlines—indexed by subject matter and number
- Budget information—files by year
- Correspondence—filed chronologically
- Personnel files and records—indexed by name (Please note that personnel records are "public records," but may be protected.)

Land Use Policy Community Relations

*Seattle Municipal Tower, 19th floor, 700 Fifth Ave.
(206) 684-8880*

- Advisory Board files—filed chronologically
- Code enforcement litigation files—indexed by defendant name
- Code histories for Building, Mechanical, Electrical and Energy Codes
- *dpdINFO*—a monthly newsletter on planning and development issues
- Title 23 Land Use Code-related ordinances and resolution files

Public Resource Center

*Seattle Municipal Tower, 20th floor, 700 Fifth Ave.
(206) 684-8467*

The following files and records are indexed by project number in the Public Resource Center files. Project numbers are cross-referenced by project address. Approximately 24 months after application is made, the files are microfilmed, and thereafter are maintained in microfilm form at the Microfilm Library (see page 1 of this CAM), where they are indexed by property address.

Master Use Permit files, including:

- Administrative Conditional Uses decisions
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 - Land Use Code (200-series)
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 - Energy and Mechanical Code (400-series)
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- Land Use Information Service bulletins (formerly known as the General Mail Release)—filed chronologically; published weekly
- Legal Building Site letters—indexed by address
- Miscellaneous public information bulletins and documents
- Zoning Committee minutes—indexed by subject
- Zoning and other Land Use Maps
- Zoning History map books—back to 1923

Applicant Service Center (ASC)

*Seattle Municipal Tower, 20th floor, 700 Fifth Ave.
(206) 684-8850*

- Pre-application files—filed by address
- Application files—filed by project number

Review & Inspection Center (RIC), South

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- Computer records on Boiler/Elevator Certificates of Inspection—current validity or date of expiration. Indexed by site address and/or by building/business name.
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Review & Inspection Center (RIC), North

*Seattle Municipal Tower, 22nd floor, 700 Fifth Ave.
(206) 684-8950*

- Construction violation files, indexed by address
- Correspondence—indexed chronologically
- Recent Building Issuance reports—indexed by month
- Special inspection files—maintained by Quality Control section
- Soils Reports

Code Compliance

*Seattle Municipal Tower, 19th floor, 700 Fifth Ave.
(206) 615-0808*

The following files are indexed by address:

- Condominium Conversion inspection records
- Just Cause Eviction complaints
- Mobile Home Park Relocation reports & plans
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- Tenant Relocation licenses and files
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- Vacant building inspections
- Violation records for Housing and Building Maintenance, Land Use, Weed and Vegetation Ordinances

The Code Compliance unit also maintains:

- Housing/Zoning Procedures, Guidelines, and Task Outlines
- Client Assistance Memos (CAMs) on Housing and Zoning Code information

Appendix A

Under RCW 42.17.310 and RCW 42.17.330, the following items are considered exempt from public inspection and copying:

1. Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.
2. Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the non-disclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.
3. Information revealing the identity of persons who file complaints with investigative, law enforcement or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: Provided, that if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: Provided, further, that all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.
4. Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.
5. Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss. (*NOTE: Architectural and design drawings for building permits shall not be considered exempt material.*)
6. Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.
7. Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in superior courts.
8. Lists of individuals requested for commercial purposes.

9. Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.
10. Residential addresses and telephone numbers of employees of the department which are held in personnel records or rosters.

NOTE: The examination of any specific public record may be enjoined if, upon motion and affidavit, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person or governmental functions.

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. 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.

Seattle Permits

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

DPD Public Records

Updated November 8, 2010

As a public agency, DPD maintains a variety of documents that are available for public inspection and copying. For persons interested in inspecting or copying public documents maintained by the department, the basic organization of DPD is given below, along with a brief description of the records maintained by each DPD service center.

Documents related to development projects are generally indexed or referenced by address. Applicable addresses can be identified from the address posted on the premises or from DPD's zoning maps and its computer-verified catalogue of established addresses. For additional information on conducting address research, please refer to DPD CAM 233, *Sources for Property Information*.

Certain documents and information are deemed by State statute to be exempt from public disclosure, generally on the grounds that disclosure would violate personal privacy or vital governmental interests. Appendix A to this memo sets forth the specific categories of documents or information exempted from disclosure by state law.

Requests for documents or information should be specific and should be made to the reception staff in the area that maintains the requested records. Requests for more than a small number of documents should be made in writing. Documents will be available for inspection and copying during the City's regular business hours.

If the information requested is not available through the reception staff at the number(s) listed in this CAM, contact the Enforcement Facilitation group at (206) 684-8880. DPD will respond to all requests as promptly as possible; however, in some instances, the Department may require several days to gather the requested documents.

A photocopying charge will be imposed for all copies

of documents requested. The charge is \$0.75 per page on regular or legal sized paper. Copies of plan sheets are available from the DPD Public Resource Center (PRC) for \$5.00 per page, with a turnaround time of approximately 48 hours. The PRC is located on the 20th floor of Seattle Municipal Tower at 700 Fifth Ave., (206) 684-8467.

Microfilm Library

Seattle Municipal Tower, 20th floor, 700 Fifth Ave.
(206) 233-5180

DPD's Microfilm Library is located in the Public Resource Center.

The following documents or files are maintained in microfilm form by address, approximately 4-6 weeks after a permit has been issued:

- Boiler
- Certificates of Occupancy
- Construction plans* and permits
- Electrical plans and permits
- Elevator
- Furnace
- Mechanical permits
- Refrigeration
- Sign

* *Original plans for single family and multifamily structures built before 1974 are not available.*

All of the following documents or files are maintained in microfilm form by address, approximately 24 months after application is made:

- Council Land Use files, including rezones, subdivisions, Council conditional uses, and Major Institution Master Plans
- Master Use Permit files, including variances, special exceptions, shorelines permits, conditional uses, and short plats
- Threshold environmental determinations

www.seattle.gov/dpd

City of Seattle
Department of Planning & Development

700 5th Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8600

The Microfilm Library provides 11" x 17" paper copies of plans for \$1.50 per sheet, and permits for \$0.75 per sheet. Diazo (microfiche) copies are available for \$5 each.

Electronic Records

*Seattle Municipal Tower, 19th floor, 700 Fifth Ave.
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DPD also maintains current application information, application review information, project history, code enforcement information and a variety of other materials in computer records format. The computer data are generally accessed and indexed either by case number, project number or street address. Limited access to the DPD Permit Tracking System (PTS) is available to customers online for information on specific projects and addresses—including a current violation database—at www.seattle.gov/dpd/permits.

Accounting & Human Resources

Seattle Municipal Tower, 18th floor, 700 Fifth Ave.

- Accounting files and records—indexed by various methods
- Accounting Procedures, Guidelines, and Task Outlines—indexed by subject matter and number
- Budget information—files by year
- Correspondence—filed chronologically
- Personnel files and records—indexed by name (Please note that personnel records are "public records," but may be protected.)

Land Use Policy

Community Relations

*Seattle Municipal Tower, 19th floor, 700 Fifth Ave.
(206) 684-8880*

- Advisory Board files—filed chronologically
- Code enforcement litigation files—indexed by defendant name
- Code histories for Building, Mechanical, Electrical and Energy Codes
- *dpdINFO*—a monthly newsletter on planning and development issues
- Title 23 Land Use Code-related ordinances and resolution files

Public Resource Center

*Seattle Municipal Tower, 20th floor, 700 Fifth Ave.
(206) 684-8467*

The following files and records are indexed by project number in the Public Resource Center files. Project numbers are cross-referenced by project address. Approximately 24 months after application is made, the files are microfilmed, and thereafter are maintained in microfilm form at the Microfilm Library (see page 1 of this CAM), where they are indexed by property address.

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