

NO. 64751-2-I

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 MAY -3 PM 3:39

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

---

DAVIDSON SERLES & ASSOCIATES, a Washington General  
Partnership and TR CONTINENTAL PLAZA CORP., a Delaware  
Corporation

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT  
HEARINGS BOARD, an agency of the State of Washington; CITY  
OF KIRKLAND, a municipal corporation; and TOUCHSTONE  
CORPORATION, a Washington Corporation and TOUCHSTONE  
KPP DEVELOPMENT, LLC

Respondents,

---

REPLY BRIEF OF APPELLANTS DAVIDSON SERLES &  
ASSOCIATES AND TR CONTINENTAL PLAZA

---

Jeffrey M. Eustis  
Aramburu & Eustis LLP  
720 Third Ave, #2112  
Seattle WA 98104  
206/625-9515  
206/682-1376 (fax)

David S. Mann  
Gendler & Mann, LLP  
1424 Fourth Ave, #715  
Seattle WA 98101  
206/621-8868  
206/621-0512 (fax)

ORIGINAL

## TABLE OF CONTENTS

|   |    |
|---|----|
| I. INTRODUCTION .....   | 1  |
| II. ARGUMENT .....  | 2  |
| A. Appellants Properly Assigned Error to the Board's Refusal to<br>Invalidate Actions Taken in Violation of SEPA.....   | 2  |
| B. The Board's Failure to Grant Invalidity Substantially<br>Prejudices Davidson and Continental.....  | 4  |
| C. The Continued Validity of the Plan and Zoning Amendments<br>Enacted in Violation of SEPA Substantially Interferes with<br>the Goal of Environmental Protection ..... | 12 |
| 1. SEPA compels the GMHB to exercise its invalidity<br>authority in a manner that assures compliance with<br>SEPA .....   | 13 |
| 2. The record supports a finding of substantial interference<br>with the environmental protection goal .....  | 15 |
| III. CONCLUSION .....   | 17 |

## TABLE OF AUTHORITIES

### Cases

|  |       |
|--|-------|
| <i>Hallauer v. Spectrum Properties, Inc.</i> , 143 Wn.2d 126, 146, 18 P.3d 540 (2001).....                             | 16    |
| <i>King County v. Washington State Boundary Review Bd.</i> , 122 Wn. 2d 648, 664, 860 P.2d 1024 (1993) .....           | 10,11 |
| <i>National Audubon Society v. Department of Navy</i> , 422 F.3d 174, 199 (4 <sup>th</sup> Cir, 2005) .....            | 9     |
| <i>Qwest Corp. v. Washington Utilities and Transp. Com'n</i> , 140 Wn. App. 255, 259-260, 166 P.3d 732 (2007) .....    | 4     |
| <i>Shoemaker v. City of Bremerton</i> , 109 Wn. 2d 504, 513, 745 P.2d 858 (1987).....                                  | 8     |
| <i>Skagit Surveyors and Engineers, LLC v. Friends of Skagit County</i> , 135 Wn.2d 542, 558, 958 P.2d 962 (1998) ..... | 13    |
| <i>Weyerhaeuser v. Pierce County</i> , 124 Wn.2d 26, 42, 873 P. 2d 498 (1994).....                                     | 9     |

### Constitutional Provision

|   |   |
|---|---|
| Article IV, Section 6 of the State Constitution ..... | 1 |
|---|---|

### Statutes

|                      |        |
|----------------------|--------|
| RCW 34.05.570 .....  | 4,5    |
| RCW 36.70A.300 ..... | 14     |
| RCW 36.70A.302 ..... | 13, 14 |
| RCW 43.21C.020 ..... | 14     |
| RCW 43.21C.030 ..... | 14     |

### Rules and Regulations

|                            |    |
|----------------------------|----|
| WAC 197-11-055(2)(c) ..... | 15 |
|----------------------------|----|

WAC 197-11-444..... 16  
WAC 197-11-655..... 16  
WAC 197-11-740..... 16  
WAC 197-11-800..... 13

**Other Authorities**

Richard L. Settle, *The Washington State Environmental Policy Act:  
A Legal Policy and Analysis* (“Settle”) § 1.15 at 1-18 (Matthew  
Bender & Co, December 2009) ..... 12

## I. INTRODUCTION

The two linked appeals present the following, interconnected issue: whether the Growth Management Hearings Board (GMHB) in exercising its invalidity authority can lawfully disregard longstanding judicial precedent invalidating agency action taken in violation of SEPA, and if so, whether under Article IV, Section 6 of the State Constitution the court retains the authority to review and invalidate the challenged plan and zoning amendments for violation of SEPA. Within this appeal of the GMHB decision, appellants Davidson Serles and Continental Plaza demonstrate that the GMHB has the authority and duty under SEPA to invalidate agency action that it has found to have been taken in violation of SEPA. Within the companion appeal of the superior court's decision, Davidson and Continental show that the court retains the authority under Article IV, Section 6 of the state constitution to invalidate agency action taken in violation of SEPA. Through these appeals appellants seek a ruling that the ordinances enacted in violation of SEPA be invalidated, and particularly under Article IV, Section 6 that invalidation relate back to the date of their adoption. The basis for this relief is fully set forth within appellants' opening brief in this matter and the opening and reply brief in the companion appeal.

This reply is devoted to responding to the arguments presented in the responsive brief by Touchstone and the City of Kirkland.

## II. ARGUMENT

### A. **Appellants Properly Assigned Error to the Board's Refusal to Invalidate Actions Taken in Violation of SEPA.**

At arguments A and B, Touchstone and the City assert that “Davidson and Continental assign no error to the Board’s findings[,]” and that those findings must therefore be treated as verities on appeal. Responsive Brief at 15 and 16. This claim lacks merit.

First, the Board’s decision contains no express findings or conclusions to which error could be assigned. Nonetheless, appellants’ Opening Brief at 3 does assign error to that portion of the Board’s decision from which they appeal, namely, the Board’s refusal to grant invalidity, which appears in the Final Decision and Order at Part IV, pp. 19-21. AR 03426-28.

Second, respondents’ somewhat narrowed claim must fail too, that appellants allegedly failed to challenge a “factual component of the Board’s finding that continued validity of the City Ordinances during the compliance period will not substantially interfere with the GMA goal to protect the environment.” By their

citation to the Final Decision and Order at 20, respondents apparently have in mind “findings” that may lie within the following paragraph:

The Board also looks to Goal 10 which requires environmental protection. In this decision, the Board has found Kirkland's SEPA review inadequate in one respect and has therefore remanded the Ordinance to the City for further review. While the deficiency is serious, the Board is not persuaded that the GMA goal will be thwarted absent a ruling of invalidity. The Board remands the Ordinances to the City, establishes a compliance schedule, and declines to enter an order of invalidity.

AR 03427. The “finding” that respondents claim to lie within the above passage -- “that continued validity of the City Ordinances . . . will not substantially interfere with the GMA goal to protect the environment” -- was not actually rendered by the Board. To the extent that respondents would deduce such a finding from the above passage, appellants have properly assigned error, by assigning error to the entirety of Part IV of the Board’s decision. In support of their assignment of error, Davidson and Continental demonstrate within their Opening Brief at 15-28 that the continued validity of the challenged ordinances does substantially interfere with the environmental protection directive of GMA Goal 10 because the enforcement of that goal must be construed through the State Environmental Policy Act, the GMHB is a state agency

whose administration of laws must be carried out in accordance with SEPA, SEPA mandates the consideration of alternatives before action is taken, and the continued validity of ordinances enacted in violation of SEPA as a matter of law substantially interferes with GMA's environmental protection goal.

To the extent that the Board rendered the finding claimed by respondents, Davidson and Continental have properly challenged such a finding of noninterference and have demonstrated that the continued validity of the challenged ordinances would substantially interfere with Goal 10 of the GMA.

**B. The Board's Failure to Grant Invalidation Substantially Prejudices Davidson and Continental.**

At argument C respondents cite to RCW 34.05.570(1)(d) for the proposition that an appellant in an appeal under the state Administrative Procedures Act must not only demonstrate fulfillment of the standards of review, but also affirmatively demonstrate within its opening brief that it has been "substantially prejudiced" by the action complained of. Respondents attempt to erect a non-existent hurdle to appellants' appeal.

The cited provision has not been applied in the manner advocated by respondents. In *Qwest Corp. v. Washington Utilities*

*and Transp. Com'n*, 140 Wn. App. 255, 259-260, 166 P.3d 732 (2007) the court reversed a trial court finding that the “substantial prejudice” provision within RCW 34.05.570(1)(d) became part of the standard of review in a rulemaking challenge brought under RCW 34.05.570(2). Since RCW 34.05.570(1)(d) is contained within a section that applies to judicial review of agency orders as well as agency rules, the result is no different here. The APA does not impose a requirement that appellants devote a portion of their briefing to the demonstration of substantial prejudice.

In the event that substantial prejudice need be shown, the record in this proceeding well demonstrates how the continued validity of the challenged ordinances prejudices the interests of Davidson and Continental. In the proceeding below, Touchstone and the City challenged appellants’ standing to bring SEPA claims. In response to those challenges, Davidson and Continental demonstrated below how the enacted ordinances prejudiced their interests.

Davidson and Continental own properties adjoining the Touchstone site, the property principally affected by the challenged ordinances. A site plan showing the relationship of the Davidson and Continental properties to the Touchstone site is set forth at

Appendix A to the Opening Brief in the companion appeal. These properties lie within the CBD5 district that imposes a 3-5 story height limitation. The challenged plan and zoning amendments, Ordinances 4170 and 4171, directly impact the Davidson and Continental properties by creating special plan and zoning districts that would allow development on the adjacent property to increase to eight stories, block off a pedestrian access, obstruct a former view corridor, increase traffic congestion and increase spillover parking onto appellants' properties. AR 01124 (Declaration of Ken Davidson). Based upon these impacts the Board determined Davidson and Continental to have standing. AR 01282 - 83 (Order on Motions at 17 – 18, June 11, 2009). With regard to injury in fact, the Board found:

...the Declaration of Kenneth Davidson provides sufficient evidentiary facts to support Petitioners' claims of specific injury. Mr. Davidson asserts:

- Under the City's plan amendment, the dedicated pedestrian corridor used by building occupants (including children at a daycare) as a City-required linkage to Peter Kirk Park, the library and performing arts center, retail and the waterfront, will be effectively blocked by being directed through a private building lobby. ¶¶ 5, 6, 7, 14, citing Ordinance 4172, Ex. 6, Design Guidelines, p. DG-16 ["through-building connection"].
- Under the City's plan amendment, Petitioners' views west toward the park and waterfront will be completely blocked, as demonstrated by an EIS exhibit. ¶ 10, Ex. 5.

- Under the plan amendment, afternoon sun and light to building occupants and the daycare playground area will be blocked. ¶¶ 9, 10.
- Under the plan amendment, a designated view corridor has simply been moved, to the detriment of Petitioners and many current Kirkland workers and guests. ¶ 11.
- Under the plan amendment, traffic congestion at the intersection of Central Way and 6th Street will increase from Level of Service C to Level of Service F, as projected by the FEIS. ¶¶ 12, 13, Ex. 4, FEIS at 4-8. This increased congestion will directly impact Petitioners and other users of their business entrances.
- Under the plan amendment, spill-over parking will likely result from the reduced supply of parking on Touchstone's property. ¶ 15. Errors in the City's parking analysis were pointed out by a traffic engineer retained by Davidson Serles to comment on the EIS. Ex. 7.

*Id.* at 15-16, AR 01280-81(paragraph notations are to the Davidson Declaration at AR 01123 *et seq.*).

Respondents did not challenge the Board's ruling on standing or any of the above findings, neither within this appeal nor in their own of appeal of the GMHB decision.<sup>1</sup> Accordingly, they are bound by the Board's ruling on standing and cannot re-assert

---

<sup>1</sup> As noted in their brief at 13, respondents have filed a separate appeal of the GMHB decision, *sub nom.*, *City of Kirkland v. CPSGMHB*, King County Cause No. 09-2-43855-2 SEA. Although the City and Touchstone have stayed the prosecution of this action, none of their issues relate to the standing of Davidson and Continental. Respondents also challenged the standing of Davidson and Continental in the superior court proceeding, which claims the superior court implicitly rejected. See CP 177 and 584 in the companion case, No. 64072-1-1. Respondents have not challenged appellants' standing in either appeal.

claims that appellants would not be prejudiced by the adopted ordinances.<sup>2</sup>

Also, in order to obtain direct review of this appeal, Davidson and Continental had to demonstrate that through delay the continued validity of the challenged ordinances would also prejudice their interests. Again, the Board agreed with Davidson and Continental:

In the matter before us, the Board finds that **delay in appeal would be detrimental to Petitioners** in two respects: (a) project conditions and mitigations may be based on inadequate environmental review, and (b) related issues concerning the ordinances would be subject to sequential rather than coordinated appellate review.

Certificate of Appealability at 4 (January 7, 2010)(emphasis in original), a copy of which is attached to appellants' Motion for Discretionary Review, etc., in this matter.

The continued validity of the challenged ordinances further prejudices appellants because the City's continued application of those ordinances, through the current, on-going design review of

---

<sup>2</sup> Because the issue of whether appellants have suffered "substantial prejudice" is effectively the same as whether they have suffered an "injury in fact" for purposes of standing, respondents' failure to challenge the GMHB's denial of their challenge to appellants' standing collaterally estops their ability to raise the substantial prejudice issue. *Shoemaker v. City of Bremerton*, 109 Wn. 2d 504, 513, 745 P.2d 858 (1987) (collateral estoppel effect given to prior administrative orders on similar issues).

Touchstone's proposed development, denies Davidson and Continental the benefit of the alternatives analysis being prepared through the supplemental EIS. By law, the SEPA alternatives analysis must precede, inform and shape the chosen course of action, not follow decisions already rendered.<sup>3</sup> In pointing out the value of the alternatives analysis to Davidson and Continental, the Board observed:

The Petitioners and others own properties in the south and east portions of the superblock. Environmental review limited to Touchstone's onsite proposal has the effect of isolating the other properties and perhaps intensifying environmental negative impacts. An alternative which considered all of CBD Area 5 might address the city's objectives differently, for example, assessing pedestrian linkages differently, finding additional "third place" or "green infrastructure" opportunities, proposing coordinated parking mitigation strategies, ensuring coordinated traffic ingress and egress management, and enhancing future redevelopment potential for the southeast properties [owned by Davidson and Continental].

Final Decision and Order at 16, fn 20. AR 03427. As the City continues to apply the very ordinances that the GMHB found to have been adopted in violation of SEPA, appellants' ability to

---

<sup>3</sup> See appellants' Opening Brief at 25-27, citing to *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 42, 873 P. 2d 498 (1994) and *National Audubon Society v. Department of Navy*, 422 F.3d 174, 199 (4<sup>th</sup> Cir, 2005).

benefit from the outcome of the required alternatives analysis, and to avoid the above-identified harms, is foreclosed. The continued validity of the special plan and zoning amendments enacted for Touchstone allows the City to continue processing Touchstone's design review application.<sup>4</sup> As that application proceeds, building designs are proposed and accepted and development under the unlawfully adopted ordinances takes on an inertia that resists later change. As the court observed in an analogous situation of an annexation adopted without preparation of the environmental impact statement:

. . . the inertia generated by the initial government decisions (made without environmental impact statements) may carry the project forward regardless. When government decisions may have such snowballing effect, decisionmakers need to be apprised of the environmental consequences *before* the project picks up momentum, not after.

*King County v. Washington State Boundary Review Bd.*, 122 Wn. 2d 648, 664, 860 P.2d 1024 (1993)(emphasis in original). In *King County*, the court reversed a threshold Determination of Non-Significance, enjoined the annexation and required preparation of an EIS so that the environmental effects of the annexation could be

---

<sup>4</sup> Copies of submittals by Touchstone to the City's Design Review Board are contained in the record at AR 1194.

reviewed. *Id.* at 667. The circumstances of the instant case are analogous. Although here an EIS had been prepared, it was found to be inadequate, requiring correction through the preparation of a Supplemental EIS, and a complete alternatives analysis. Just as would have been the case in *King County* had the annexation not been enjoined, allowing the City to continue to apply the plan and zoning amendments enacted without full environmental review creates a “snowballing effect” that resists consideration of the alternatives analysis presently under review. And just as in *King County*, that review must be prepared “*before* the project picks up momentum.”<sup>5</sup> That momentum prejudices Davidson and Continental because it effectively precludes the consideration of alternatives that would alleviate the harm from Touchstone’s proposed project, as identified by the Board in the passage above.

In sum, the continued validity of the challenged plan and zoning amendments substantially prejudices appellants’ interests.

---

<sup>5</sup> Contrary to respondents’ claim in their response at 19 that the invalid-for-noncompliance-with-SEPA-jurisprudence pre-dates GMA, the *King County* decision was rendered subsequent to the enactment of GMA. Although the decision under review was an annexation, it arose in the context of GMA planning, the County’s designation of interim urban growth area boundaries. *Id.* at 668.

**C. The Continued Validity of the Plan and Zoning Amendments Enacted in Violation of SEPA Substantially Interferes with the Goal of Environmental Protection.**

At arguments D, E, F and G respondents contend that: the GMHB remedial authority is limited by the GMA, SEPA provides no independent authority to the GMHB, the record contains nothing that would support a finding of substantial interference with GMA's Goals, and the GMHB therefore properly denied appellants' request for invalidity.

Apart from a minor quibble over respondents' citation to a passage from an outdated edition of the *Settle* text,<sup>6</sup> appellants

---

<sup>6</sup> The text, *Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis* was re-published using different section headings and pagination, so that the provision relied upon by respondents at §20(f) of the 1995 edition no longer exists. The passage that respondents appear to reference presently provides as follows, a passage by the way that reinforces appellants' position regarding the appropriate relief for non-compliance with SEPA:

Neither the statute nor Rules address legal remedies for SEPA noncompliance. Since state and local agency authority to act is qualified by the requirements of SEPA, agency action attended by SEPA noncompliance is unlawful, outside the agency's authority, *ultra vires*. The usual remedial result of a judicial determination of SEPA violation is simply invalidation of the agency action. Thus, action which was not preceded by a proper threshold determination process is invalid and the agency must begin the decision-making process anew; and action for which a required EIS was inadequate or not prepared is rendered a nullity and remanded for reprocessing in light of an EIS.

*Settle, The Washington State Environmental Policy Act: A Legal and*

accept that the GMHB, as a creature of statute, possesses only those powers expressly conferred by statute, or by necessary implication.<sup>7</sup> However, appellants disagree that SEPA's directives play no role in the Board's exercise of its invalidity authority and that the record contains no support for a finding of substantial interference, which are addressed in the subheadings below.

**1. SEPA compels the GMHB to exercise its invalidity authority in a manner that assures compliance with SEPA.**

Respondents at 23 contend that “there exists no statutory authority, stated in SEPA or in GMA, authorizing the Board to fashion an invalidation remedy to enforce the requirements of SEPA per se.” Respondents are mistaken. As respondents themselves note, the GMA at RCW 36.70A.302(1)(a) provides authority to the Board to invalidate actions taken without compliance with SEPA. But the GMHB is not just a tribunal; it is an agency of the state that is itself governed by SEPA.<sup>8</sup> As shown in

---

*Policy Analysis*, December 2009 supp., §20.09(1) at 20-37 (emphasis supplied; footnotes omitted.)

<sup>7</sup> See Opening Brief at 16-19 and *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998).

<sup>8</sup> As a quasi-judicial agency, its actions are only exempt from the requirements to render threshold determinations and prepare environmental documents, not from SEPA's overarching directives. See WAC 197-11-800 and -800(11).

appellants' Opening Brief at 19-23, SEPA directs the GMHB, as it does other state agencies, to administer its laws "to the fullest extent possible" in accordance with the statute's stated policies, including the attainment of "aesthetically and culturally pleasing surroundings ... [and] the widest range of beneficial uses of the environment without degradation[.]" RCW 43.21C.020(b) and (c). The laws administered by the GMHB do include the authority to invalidate local government action for noncompliance with SEPA. RCW 36.70A.300(1) and .302(1). SEPA directs the Board to exercise that authority to the "fullest extent possible" to attain SEPA's policies. Where those policies are in part achieved through the consideration of alternatives,<sup>9</sup> and where the GMHB has already found plan and zoning amendments to violate SEPA for lack of consideration of alternatives, the statute's directive that the GMHB "use all practicable means" to achieve SEPA's policies logically requires that when the Board finds noncompliance with SEPA, it shall also use the means at its disposal, including the exercise of invalidity authority, to assure that SEPA's policies and

---

<sup>9</sup> RCW 43.21C.030(2)(c)(iii) requires the consideration of alternatives within an environmental impact statement) and RCW 43.21C.030(2)(e) requires the "study of appropriate alternatives" even outside of the EIS process.

requirements are not defeated by the continued enforcement of ordinances enacted in violation of the statute's requirements. Any other result would fall short of SEPA's directive that the GMHB, "to the fullest extent possible", administer its authority to fulfill the SEPA objectives. In short, SEPA overlays the GMHB's statutory authority and directs the GMHB to exercise its invalidity authority to carry out SEPA's policies and requirements.

**2. The record supports a finding of substantial interference with the environmental protection goal.**

Because SEPA overlays both the GMA and the GMHB's exercise of its remedial authority, a determination of substantial interference with GMA's environmental protection goal requires consideration of the extent to which continued validity would also interfere with SEPA's own policies and requirements. Here the record clearly demonstrates that it would. As noted within appellants' Opening Brief at 25, SEPA requires environmental review to inform decisionmaking<sup>10</sup> and the consideration of alternatives to precede and shape the selection of a chosen course

---

<sup>10</sup> WAC 197-11-055(2)(c) requires that "[a]ppropriate consideration of environmental information shall be completed *before* an agency commits to a particular course of action." (Emphasis added.)

of action.<sup>11</sup> However, the outcome provided by the GMHB here, of allowing the City to continue to proceed with application of the plan and zoning amendments enacted in violation of SEPA while it conducts the very alternatives analysis that was required to have been conducted *before* adoption of those amendments, is the inverse of that mandated by SEPA. As a result, the impacts to the environment, and particularly to Davidson and Continental, that would be addressed through the required SEPA review – the isolation of their properties from the remainder of CBD5 zone, increased traffic congestion and spillover parking, the blockage of a pedestrian corridor, and the obstruction of light, view and air<sup>12</sup> – are allowed to proceed without consideration of the further SEPA analysis that would address and ameliorate those impacts.

---

<sup>11</sup> WAC 197-11-655(3)(a) provides that “[w]hen a decision maker considers a final decision . . . [t]he alternatives in the relevant environmental documents shall be considered.”

<sup>12</sup> The Touchstone development’s isolation of the Davidson and Continental properties from the remainder of the CBD 5 is graphically illustrated in the photos set forth at AR 1186. Each of the identified impacts affects the “environment”, as that term is defined under SEPA. See WAC 197-11-740 (defining environment by its elements) and WAC 197-11-444 (including within the elements of the environment vehicular traffic, parking, aesthetics, light and glare). Under the statutory construction rule, *in pari materia*, terms used in statutes relating to the same subject matter, protection of the environment, should be given consistent meanings. *Hallauer v. Spectrum Properties, Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001).

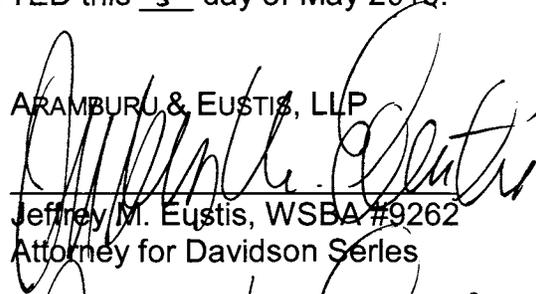
Because SEPA overlays the GMA, protection of the environment under Goal 10 occurs in part through compliance with SEPA. Consequently, the continued validity of the plan and zoning amendments enacted in violation of SEPA substantially interferes with GMA's environmental protection goal. The GMHB erred by refusing to invalidate the plan and zoning amendments.

### III. CONCLUSION

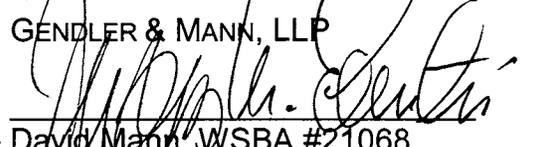
For the above reasons, the GMHB's refusal to invalidate the plan and zoning amendments was clearly erroneous and should be reversed and remanded with direction to order invalidity.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of May 2010.

ARAMBURU & EUSTIS, LLP

  
Jeffrey M. Eustis, WSBA #9262  
Attorney for Davidson Serles

GENDLER & MANN, LLP

  
for David Mann, WSBA #21068  
Attorneys for TR Continental  
Plaza Corp.

*per authorization*

DECLARATION OF SERVICE

I am an employee in the law offices of Aramburu & Eustis, LLP, over eighteen years of age and competent to be a witness herein. On the date written below, I served copies of the foregoing document upon the following parties of record by first class mail addressed to:

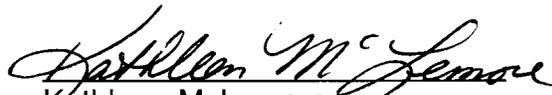
Robin S. Jenkinson  
Office of Kirkland City Attorney  
123 Fifth Avenue  
Kirkland WA 98033

G. Richard Hill  
McCullough Hill, PS  
701 - 5<sup>th</sup> Avenue #7220  
Seattle WA 98104

Jerald R. Anderson, WSBA# 8734  
Assistant Attorney General  
Attorney General of Washington  
Licensing & Administrative Law Division  
PO Box 40110  
1125 SE Washington Street  
Olympia WA 98504-0110

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

DATED: May 3, 2010

  
Kathleen McLemore