

No. 36003-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

CITY OF BREMERTON,

Appellant,

v.

WEBG, LLC,

Respondent.

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STATE OF WASHINGTON
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APPELLANT CITY OF BREMERTON'S REPLY BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In this Reply Brief, the City of Bremerton (“City”) addresses the assertions of fact and legal arguments made by WEBG, LLC (“WEBG”) in its Brief of Respondent (“WEBG Br.”). The City reaffirms its Opening Brief and will avoid repetition in this brief. WEBG largely ignored the City’s arguments in Appellant’s Opening Brief (“City’s Opening Br.”). Rather than directly addressing the City’s arguments, WEBG contrives a story of a developer victimized by City officials. In doing so, WEBG ignores, misrepresents, or distorts facts in the record and misstates applicable law.

The City simply enforced the terms and conditions of the Building Permit, by issuing the Stop Work Order, Ex. CC, which was amply justified because (1) WEBG demolished most of a building that it was not authorized to demolish by the Building Permit, (2) WEBG failed to perform an asbestos survey before conducting the unauthorized demolition, as expressly required by Building Permit Condition 4, (3) the unauthorized demolition resulted in loss of right to rebuild the nonconforming structure in the same location, and (4) the demolition and resulting necessity to rebuild virtually the entire structure exceeded the scope of the Shoreline Exemption which was limited to the construction authorized by the Building Permit. Any one of these violations of the

terms and conditions of the building permit, shoreline exemption, and City codes justified the Stop Work Order.

WEBG does not argue that it did not perform demolition. WEBG does not argue that it performed an asbestos survey before conducting the demolition, as was expressly required by Condition 4 of the Building Permit. On this basis alone, the Stop Work Order was justified.

Nor does WEBG rebut the City's other central argument that the plans showed that the existing concrete masonry walls and footings, not only on the north side, but also the south and east sides of the building were to remain, as illustrated on Exhibit H, Sheet 1. City's Opening Br. at 14. That is, it was the City's reasonable interpretation of the plans and WEBG's characterization of its proposed "remodel" and "refurbishment" of an existing building that the exterior of the structure would remain except the roof, which would be replaced, and the window wall along the westerly view side. WEBG does not deny the existence of the plan notations, "EX. CMU WALL TO REMAIN" AND "EX. FTG. TO REMAIN" with an arrow pointing directly to the south concrete masonry wall and, specifically, to a graphic indicator resembling barbed wire, that is drawn along the south wall and continues along the entire east wall and approximately 70% of the north wall up to a perpendicular line beyond which is the notation "NEW FOUNDATION". WEBG repeatedly argues

that only the north concrete masonry wall was to remain. However, WEBG has not identified anything in the plans indicating that only the north wall was to remain, but the east and south walls were to be demolished. Indeed, WEBG's brief includes, as Attachment A-4, an enlargement of Ex. W, Sheet 1 (which is identical to Ex. H, Sheet 1) which clearly shows the notation "EX. CMU WALL TO REMAIN," with an arrow pointing to the **south** wall and with the barb wire-like indicator that the notation pertains to the east wall as well. The undisputed demolition of the south and east masonry walls also justifies the Stop Work Order.

A particularly flagrant and misleading example of the misrepresentations in WEBG's brief, which makes one wonder whether WEBG even read the City's brief, relates to a central basis for the Stop Work Order discussed above. WEBG explicitly misrepresents that one of the most central and most disputed facts in the case is "undisputed:"

It is undisputed that the detailed plans and specifications submitted to Bremerton by WEBG identified that only the north wall and portions of the foundation were to remain in WEBG's restoration of the building.

WEBG Br. at 15. (Emphasis added.) This statement is absolutely false. It has been the City's consistent interpretation of the submitted plans and applications that the existing concrete masonry walls, on the north, east,

and south sides of the structure and most of the existing foundation were to remain and only the roof and the window wall on the west side, facing the water would be replaced. See, City's Opening Br. at 14-15.

On the same page of its brief appears WEBG's flagrant misrepresentation that "Bremerton's revocation of WEBG's shoreline exemptions is similarly uncontroverted." The City consistently has taken the position before the Examiner, Superior Court, and in its Opening Brief, at 35-39, that it did not rescind the Shoreline Exemption or Building Permit, but rather **enforced** the Building Permit, and thereby the Shoreline Exemption, which was limited to what was authorized by the Building Permit, through the Stop Work Order. The City's only action that was before the Examiner and this Court is the Stop Work Order that was issued because "**Work being done exceeds work defined on Permit.**" Ex. CC (Emphasis added). Twice, WEBG makes a related misrepresentation of the Hearing Examiner's decision, falsely referring to the "hearing examiner's conclusion that Bremerton had **illegally** revoked WEBG's exemption from the Shoreline Substantial Development Permit" WEBG Br. at 3, and falsely stating that "[t]he hearing examiner properly concluded that Bremerton **illegally** revoked WEBG's shoreline exemption by issuance of a Stop Work Order," WEBG Br. at 4. (Emphasis added.) While the Examiner inaccurately characterized the City's enforcement

action as rescission of the shoreline exemption, the Examiner never characterized the rescission as illegal and repeatedly, in both his Findings, Conclusion, and Decision and his decision on Request For Reconsideration, ruled that the City's action was lawful. While the City disagrees with the form of the Examiner's semantic characterization of the City's action, the City wholeheartedly agrees with the Examiner's decision that the City's action was lawful and supported by substantial evidence. There is no justification whatsoever for WEBG's gross misrepresentation of the Examiner's decision.

A misleading usage in WEBG's brief is its characterization of the location of the terms and conditions of the building permit as the "cover sheets" of the building permit, apparently attempting to minimize their significance. What WEBG calls the "cover sheets" **are** the six-page building permit, as they plainly are labeled. Ex. AA, attached as Appendix 3. Moreover, WEBG's representative, Andrew Graham, separately signed every one of the 35 conditions in the permit. *Id.* He also signed the statement on the first page of the permit that "I have read, and agree to be bound by the conditions of this permit including all conditions of zoning, building codes, and state and federal laws." *Id.*

WEBG's error-laden story apparently is designed to distract the Court from the only issue before the Examiner and this Court. The only

issue is the validity of the City's Stop Work Order based on the City's determination that the demolition without an asbestos survey and the unauthorized demolition of most of the existing structure violated the terms and conditions of the Building Permit.

Throughout its brief, WEBG continually has attempted to cast blame on the City rather than accepting responsibility for the consequences of its own actions. The City had authority to order that work be stopped on the project because WEBG had violated the terms and conditions of the Building Permit, the Shoreline Exemption, or both. WEBG was entitled to proceed with the project only if it was in compliance with both. WEBG could have, but did not, file a timely appeal of Building Permit Condition 32 ("Interior Remodel") which it now attacks as erroneous. WEBG groundlessly complains that Condition 32 was "buried" in the "cover sheets" of the Building Permit and was not noticed by the WEBG member who picked-up the permit, "in his haste and excitement to obtain the permit." WEBG Br. at 8, 29. In fact, Condition 32, limiting construction to an "interior remodel" with several specified exceptions, was prominently displayed in the Building Permit, itself, not "cover sheets", was one of only two conditions called-out as "Project Specific" conditions, was reflected in the language describing the permitted construction on the top of the first page of the permit as

“INTERIOR REMODEL TO BUILDING,” and was separately initialed by Andrew Graham, the WEBG member to whom the permit was issued.

WEBG could have disclosed what it planned to demolish in its application as required by the Building Code (IBC sec. 106.2), but did not do so and offers no justification for this omission. WEBG was required to disclose proposed demolition in the SEPA Checklist accompanying its Building Permit application, but responded “none” to the question “will any structures be demolished?” WEBG offers no explanation for this representation that there would be no demolition. WEBG could have performed an asbestos survey before the demolition, as required by Building Permit Condition 4. But it is undisputed that WEBG did not do so and offers no explanation for this violation of Condition 4.

WEBG’s attempt to separate the issues of whether it violated the Shoreline Exemption and the Building Permit is artificial, unnecessary, and confusing. The Shoreline Exemption, by its nature, did not authorize construction, but merely dispensed the proposed development from the Shoreline Substantial Development Permit requirement. The Building Permit authorized construction which, as limited by the permit conditions, the City had determined would be within the shoreline exemption for normal maintenance and repair and, thus, not require a Shoreline Substantial Development Permit. Thus, the only permit granted for, and

imposing limitations on, the project was the Building Permit. Conditions on this permit were clearly violated. The Stop Work Order was issued for violation of the Building Permit. As handwritten on the Stop Work Order, it was issued because “Work being done exceeds work defined on Permit.” WEBG’s activities were required to comply with **both** the Building Permit and the Shoreline Exemption. Compliance with both was required. Whether or not the particular enforcement method of the Stop Work Order would have been authorized for violation of the Shoreline Exemption, alone, the demolition violated both the Building Permit and Shoreline Exemption and, the City clearly had authority to issue a Stop Work order for violation of the Building Permit. BMC 1.04.050 and IBC sec. 114.

WEBG disparages the City’s offer of review of the Stop Work Order by the Director of the City’s Department of Community Development, by characterizing it as a “conjured up...appeal procedure,” WEBG Br. at 2, and a reconsideration process that WEBG was “direct[ed]” to pursue, WEBG Br. at 25. The record clearly shows that the City offered, but did not require, a voluntary administrative review by the Department Director of the Building Inspector’s Stop Work Order. *See* Exs. HH, II, JJ, and NN. However, apparently, WEBG is merely demeaning the process and is not challenging its validity. It would be far too late to do so because WEBG voluntarily pursued reconsideration by

the Director and did not challenge the Director's authority before the Hearing Examiner. Having failed to challenge the Director's authority before the Examiner, WEBG may not do so for the first time in court. *Boehm v. City of Vancouver*, 111 Wn. App.711, 47 P.3d 137 (2002).

WEBG attempts to draw the Court's attention to the decision of the trial court. However, the law is absolutely clear that the trial court decision is now irrelevant, and this Court directly reviews the decision of the Hearing Examiner. *HJS Development v. Pierce County*, 148 Wn.2d 451, 467-68, 61 P.3d 1141 (2003). See City's Opening Br. at 19-21.

II. STATEMENT OF THE CASE

The City reaffirms the Statement of the Case in its Opening Brief at 5-19, and will address, in this section of its Reply Brief, only materially erroneous or misleading representations in WEBG's Brief. Some of these previously were addressed in the Introduction and Summary of Argument of this Reply Brief, *supra*, at 3-5, and will not be repeated here.

A dominant theme of WEBG's brief is the assertion that Planner JoAnn Vidinhar acted improperly by failing to examine the details of the building plans submitted. WEBG Br. at 1,2,7,8,18,19,24,27,28,29. This assertion is both incorrect and legally irrelevant.

The assertion is incorrect because Planner Vidinhar's role in reviewing the building permit application was limited to determining

whether the proposed construction was compliant with zoning and shoreline regulations. Such regulations pertained to the use, location of the proposed development on the site, height, landscaping, parking, and the like which were derived from the applicant's site plan, elevations, and characterizations of the proposed use and development, not the detailed construction plans. For example, she properly determined that the original proposal was not eligible for the normal maintenance and repair shoreline exemption based on her review of drawings of the elevation of the roof showing that it would have expanded the volume and increased the height of the structure. Her general review of the revised proposal and building permit application, which did not identify any proposed demolition, except for the roof, and indicated replacement only of specified elements of the building (including the roof in its present configuration, windows, and numerous elements of the interior of the building), provided an adequate basis for her determination that the revised proposal was an "interior remodel" except for the roof replacement and, as such, was eligible for the Shoreline Exemption. Ms. Vidinhar, as explained in her testimony before the Hearing Examiner, *see* City's Opening Br. at 12, reasonably concluded that the scope of the proposed project was an "interior remodel" because WEBG expressly represented that there would be no demolition of the exterior of building in their applications and accompanying SEPA

Checklist, except for the roof and window replacements. Review of the detailed specifications in the plans for compliance with the building code was the responsibility, not of Ms. Vidinhar, but of the Building Inspector, Larry Craze. He properly carried-out this responsibility by reviewing the detailed plans, and there is no evidence in the record to the contrary.

The assertion regarding Planner Vidinhar's supposed responsibility to review detailed construction plans was legally irrelevant because, even if she erroneously included Condition 32, limiting the permitted construction to an interior remodel with specified exceptions, that would not have excused WEBG's violation of Condition 32. Rather, WEBG's remedy would have been to file a timely appeal of Condition 32.

In a related erroneous assertion, WEBG complains that the "Bremerton Planners visited the site and directed that a Stop Work Order be placed on WEBG's construction activities" even though the "planners still had not reviewed the City approved plans and specifications." WEBG Br. at 1. This is incorrect. The Stop Work Order was issued by the Building Department which did review the detailed plans, not the "planners." The Stop Work Order issued on February 17, 2006 and the revised Stop Work Order issued later on the same day both were issued by the City's Building Department, signed by Building Inspector, Curtis

Hogenson, *see* Exs. CC and DD, not by City Planner JoAnn Vidinhar of the City's Department of Community Development.

As stressed above in the City's Introduction and Summary of Argument, WEBG has flagrantly misrepresented a central fact in this case:

[i]t is undisputed that the detailed plans and specifications submitted to Bremerton by WEBG identified that only the north wall and portions of the foundation were to remain in WEBG's restoration of the building.

WEBG Br. at 15 (Emphasis added). This assertion is **not "undisputed"**. It has been the City's consistent position and the plans incorporated into the Building Permit show, that on most of the north side and the east and south sides of the building, the existing concrete masonry unit walls were to remain," Ex. H, Sheet 1, attached as Appendices 1 and 2. There is no distinction in the plans, in this respect, among the north, south, and east walls of the building. There is no dispute that the westerly view window wall, which was not composed of concrete masonry units (CMU), as were the north, east, and south walls, was to be replaced. It is undisputed that the abbreviated notation, "EX. CMU WALL TO REMAIN" was attached by an arrow not to the north wall, but the south wall, and, as indicated by the barb wire-like graphic along the south, east, and most of the north wall, pertained to all of those existing CMU walls. Ex. H, Sheet 1, attached as Appendix 1, and a magnified portion of Sheet one to make the

above-quoted plan notation easily readable is attached as Appendix 2.

Only a portion of the north CMU wall which, as can be seen in the photograph in Exhibit BB, City's Opening Br. at Appendix 1, remained after the demolition. The doors and windows in the remaining portion of the north CMU wall indicate that it is 9-10 feet in height. The demolished east and south CMU walls, which along with the north wall, supported the roof, would have reached the same height, if they had not been demolished. The photograph of the north wall in Exhibit BB shows footings extending beyond the remaining wall to both the east and the west, indicating that much of that wall was demolished, as well. WEBG acknowledges that the north wall was to be remain and was not to be demolished. Thus, the demolition of part of the north CMU wall violated the Building Permit, as well. It is especially important that WEBG has attached to its brief, as Attachment A-4, an enlargement of Ex. W, Sheet 1, which is identical to Ex. H, Sheet 1. Thus, WEBG specifically acknowledges the part of the plans which contains the notation EX. CMU WALLS TO REMAIN connected by arrow to the **south** wall. Perhaps WEBG confused the north and south walls in the plans.

WEBG does not disagree that the City's Building Code, IBC sec. 106.2, requires that building permit applications disclose in the **“construction documents filed with the application ... construction to**

be demolished and the location and size of existing structures and construction that are to remain on the site” WEBG members Wideman and Graham admitted in testimony before the Hearing Examiner, ADR Transcript at 107: 10-19 and 123: 18-21, and WEBG does not attempt to excuse, the failure of its application, Ex. E, to disclose the construction that was to be demolished and the construction that was to remain on the site. WEBG does not attempt to explain, or even acknowledge, its misrepresentation in the accompanying SEPA Checklist that no demolition was proposed. Ex. M, p.8.

WEBG implicitly admits that the plans incorporated in the Building Permit indicated that the existing exterior CMU walls, except for the westerly window wall, were to remain by characterizing the decision to tear-down most of the exterior walls as a change in “construction methodology”:

WEBG member and builder David Wideman decided that the most cost effective methodology for the remodel was to remove all of the existing improvements structurally non-compliant with current codes, leaving only portions of the foundations and the north wall.

WEBG Br. at 9 (Emphasis added). WEBG cites no authority for the proposition that a permittee may demolish what was to remain in place or build something other than what was shown in the plans because it would be cost-effective to do so. If that were the law, building permits would be

virtually meaningless and building codes would be unenforceable.

Building permits are not ‘chiseled in stone’ and may be revised through a proper application and review process. WEBG could have sought a revision of the permit and still may do so, but never has.

II. ARGUMENT

A. **This Court Directly Reviews The Decision Of The City’s Hearing Examiner, Not The Trial Court’s Decision.**

It is “black letter” Washington law that where a trial court’s LUPA decision on a challenged land use decision is appealed, the appellate court directly reviews the challenged land use decision, such as the Examiner’s decision in this case, not the trial court’s decision. *HJS Development v. Pierce County*, 148 Wn.2d 451, 467-68, 61 P.3d 304 (2001). Thus, WEBG’s focus on the trial court’s decision and inclusion of that decision, as Attachment A-1, to the WEBG Brief of Respondent is an improper distraction and implied representation that the trial court decision is relevant in this Court.

Review of the trial court’s decision, though not necessary or even appropriate, would reveal that the trial court did not recognize the deference it owed under the substantial evidence standard and improperly reviewed the evidence, *de novo*, in effect, substituting its findings for the Examiner’s, though WEBG did not even challenge the Examiner’s findings before the trial court. CP at 39-46.

B. Standard of Review

WEBG implies that the question before this Court is whether WEBG violated the Building Permit or Shoreline Exemption, as if this Court were deciding this question in the first instance. The Final City decision to issue the Stop Work Order was explicitly based on its decision that WEBG violated the Building Permit. Ex. CC. On appeal to the Hearing Examiner, the issue was whether there was substantial evidence supporting issuance of the Stop Work Order under the applicable “substantial evidence” standard of administrative review. BMC 20.02.140(a)(2); Ex. 1, p. 8. Since the Examiner decided that the “Director’s decision was based on substantial evidence and is upheld,” Ex. 1, p. 1, the precise question before this Court is whether the Examiner erred, under any of the LUPA standards of review, in concluding that the Director’s determination was supported by substantial evidence. RCW 36.70C.130(1). Since the Director’s decision was based on fact, i.e., whether the work performed exceeded the scope of the work authorized in the building permit, the “substantial evidence” standard of review applies. *Id.* Thus, the deference owed to the Director’s determination that WEBG exceeded the scope of the permit, Ex. NN, is compounded by the dual application of the deferential substantial evidence standard first by the

Examiner to the Director's decision and now by this Court to the Examiner's decision.

Under LUPA's "substantial evidence" standard, all inferences must be weighed "in a light most favorable to the party that prevailed in the highest forum that exercised fact-finding authority." *Griffin v. Thurston County*, ___ Wn. App. ___, 154 P.3d 296,299 (2007). The City prevailed before the Hearing Examiner, and, therefore, the factual evidence must be construed in favor of the City.

C. The Validity of the Building Permit Conditions Violated by WEBG Was Not Before the Examiner and Is Not Before This Court.

WEBG focuses its attack on Condition 32 of the Building Permit, which (1) restricts the permitted construction to an "interior remodel," with several detailed exceptions including a new roof in the same configuration as the existing roof, (2) contains no exception for the demolition and replacement of the existing concrete masonry walls and foundation, and (3) requires additional review and approval for work outside of the described scope of the permit. WEBG attempts to undermine the validity of Condition 32 by arguing that it was not consistent with the plans submitted by WEBG, characterizing Condition 32 as an "error." WEBG Br. at 7,27,29. But if WEBG regarded Condition 32 as an error, its only remedy was to file a timely appeal of this

permit condition in the appropriate forum, not to flagrantly violate the condition by demolishing virtually the entire structure. Thus, WEBG's attacks on Condition 32 are irrelevant because the validity of Condition 32 was not before the Examiner and is not before this Court. WEBG could have filed a LUPA action, challenging the validity of Condition 32 of the Building Permit, within 21 days of its issuance, but did not do so. Thus, the issue before this Court is limited to whether substantial evidence supported the Examiner's decision upholding the City's issuance of a Stop Work Order based upon its determination that WEBG's demolition of virtually the entire building violated the terms and several permit conditions of the Building Permit, including Condition 32.

D. Substantial Evidence Supported the City's Determination that WEBG's Demolition Violated Condition 4 (Asbestos Removal Requirement) of the Building Permit

The Building Permit did not authorize demolition of the existing structure. The Building Permit did not do so because WEBG, in violation of the City's Building Code, IBC sec. 106.2, failed to disclose in the "construction documents filed with the [building permit] application..., construction to be demolished and the location and size of existing structures and construction that are to remain on the site...". WEBG disclosed no demolition in its building permit application. Ex. E. Moreover, the State Environmental Policy Act Environmental Checklist

that accompanied WEBG's application for building permit and shoreline exemption included Question 8.d: **"Will any structures be demolished? If so, what?"** The written response to this question by WEBG member and attorney, Bill Broughton, was **"None."** Ex. M, p. 8. (Emphasis added.) In addition, Condition 4 of the Building Permit required **[p]rior to performing any renovation or demolition work" that "an asbestos survey be performed to determine whether there are asbestos-containing materials in the work area or structure."** Ex. AA, p. 2 (Emphasis added.) WEBG did not perform an asbestos survey prior to demolishing nearly the entire building. Thus, it is incontrovertible: (1) that the City Building Code explicitly required WEBG to disclose any proposed demolition of existing structures in its application, and WEBG did not do so; (2) that in the required SEPA Environmental Checklist, WEBG expressly represented that it was not proposing any structural demolition; (3) that WEBG failed to perform an asbestos survey prior to performing demolition work, as required by Condition 4 of the Building Permit; and (4) that the massive debris from the demolition of nearly the entire building (as depicted in Ex. BB, attached as Appendix I to City's Opening Brief) was pervasively contaminated by asbestos. Ex. LL, p. 3. Yet, WEBG argues that the City was required to somehow divine from the plans submitted that WEBG was proposing to demolish most of the

building even though the plans did not identify any proposed structural demolition and explicitly indicated that most of the existing foundation and concrete masonry walls were to remain.

Even if this Court were to decide that the City should have somehow interpreted the plans as proposing the demolition and should have ignored WEBG's representation that no demolition was proposed, WEBG nevertheless clearly violated Condition 4 of the Building Permit which is just as applicable to authorized demolition as it is to unauthorized demolition. WEBG, in its Brief of Respondent, simply ignores its undisputed violation of Condition 4 of the Building Permit, requiring asbestos survey and removal, which alone unquestionably justified the City's Stop Work Order, the validity of which was the only issue before the Examiner.

E. Substantial Evidence Supported the City's Determination that WEBG's Demolition Violated Condition 32 ("Interior Remodel" Limitation) of the Building Permit.

The Building Permit, Ex. AA, at the top of the first page described the permitted construction as "INTERIOR REMODEL TO BLDG FOR NEW RESTAURANT CALLED CLIFFSIDE." Below this description, WEBG member, Andrew Graham, printed and signed his name, affirming that **"I have read and agree to abide by the conditions of this permit including all conditions of zoning, building codes, and State and**

Federal laws.” Ex. AA, p.1 (Emphasis added.) The Building Permit contained 35 conditions set forth on the first 5 pages of the 6-page permit. Most of the conditions are standard, based on local codes and federal and state law. Conditions 32 and 33, labeled “Project Specific”, were special conditions for the WEBG project. Each of the 35 conditions, including Condition 32, were separately initialed by Andrew Graham. Yet, WEBG argues that “[i]n his haste and excitement to obtain the permit, Mr. Graham failed to notice” Condition 32 which WEBG characterizes as an “error”. WEBG Br. at 8. Even if Mr. Graham failed to notice one of the two project specific conditions that he separately initialed after he signed the statement that he had read and agreed to be bound by all of the conditions, WEBG failed to explain why none of WEBG’s members or representatives ever read the description of the permitted construction as an “INTERIOR REMODEL” on the first page or the project specific Condition 32. The project specific conditions are the most important ones. It seems inconceivable that any reasonable developer would ignore them. Condition 32, in plain language limited the permitted construction:

Development is for **interior remodel** of the restaurant, **including replacing the roof in its current configuration**, installation of sprinklers and ADA accessible amenities, installation of a new curb, gutter, sidewalk, streetlights, and landscaping. In addition development includes repaving, top-coating and restripping the existing parking lot abutting the restaurant. **Any work outside of this scope requires additional review and approval.**

Appendix 3, Ex. AA, p. 5 (Emphasis added.) WEBG characterizes the City's condition, limiting the permitted construction to an "interior remodel" with several specified exceptions, such as the roof replacement, as an "error", WEBG Br. at 7,8,25,28. The limitation in Condition 32 was reasonable in light of WEBG's failure to disclose any proposed demolition, WEBG's repeated characterization of its proposal as a "remodel" and "refurbishment" of an existing building, and the plan notations indicating that the north, east, and south CMU walls would remain and only the window wall on the westerly view side would be replaced. Appendices 1 and 2, Ex.H, Sheet 1. But even if Condition 32 had been an "error", WEBG's remedy was to file a timely challenge of the permit condition in an appropriate forum.

Since WEBG did not appeal Condition 32, it was binding and its violation justified the Stop Work Order. The City reasonably concluded that the massive demolition of nearly the entire structure violated Condition 32. For example, Building Inspector Jim Svensson testified that the plans indicated that floor joists would be attached to the existing foundation, but compliance with the plans became impossible when these portions of the foundation were demolished. ADR at 50:4-11. WEBG implausibly argues that Condition 32 was not violated by demolition of nearly the entire building because Condition 32 allowed replacement of

the roof. WEBG Br. at 24. Obviously, a permit condition limiting construction to an “interior remodel along with roof replacement” cannot be reasonably construed as also allowing replacement of all of the exterior walls, as well. So construed, the word “interior” would be meaningless. As was the case with the violation of Condition 4, relating to asbestos survey and removal, the violation of Condition 32, alone, justified the City’s Stop Work Orders, the validity of which was the only issue before the Examiner.

F. The Language Of The Hearing Examiner’s Decision Should Be Clarified To Eliminate Any Suggestion That The City Revoked Or Rescinded The Shoreline Exemption

WEBG does not directly respond to the City’s nonsubstantive argument that the Examiner inaccurately characterized the City’s enforcement action, issuance of the Stop Work Order, as “effectively rescind[ing] the shoreline exemption.” Ex. 2, p.3. The Examiner upheld the City’s Stop Work Order and his affirmance did not depend on any specific characterization of the City’s action in relation to the Shoreline Exemption. However, as previously explained, the Examiner’s unnecessary but erroneous characterization could affect WEBG’s damage action against the City pending in Federal District Court. City’s Opening Br. at 37-38. WEBG merely argues that the City was barred from revoking the Exemption after 21 days have elapsed. The City is not

arguing that it had authority to revoke the exemption. The City is arguing it did not revoke or rescind the Exemption but merely enforced the terms of the Building Permit which also limited the scope of the Shoreline Exemption

III. CONCLUSION

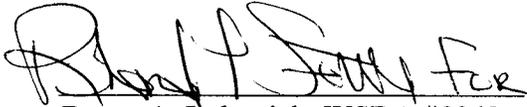
It is undisputed that WEBG (1) failed to disclose any demolition plans, as specifically required by the Building Code, (2) explicitly denied that it proposed any demolition in the SEPA Checklist that accompanied its Building Permit application, (3) failed to perform an asbestos survey prior to any demolition, and (4) demolished the building except for part of the north wall and foundation. On the basis of these uncontested facts, WEBG violated Condition 4 (asbestos) of the Building Permit, and the Stop Work Order was justified on this basis alone. WEBG attacks the validity of Condition 32 (“Interior Remodel” limitation), but it is much too late to do so. WEBG was bound by and violated Condition 32. WEBG has been free to modify its proposal and apply for revision of the Building Permit, but never has done so.

For the reasons set forth in the City’s Opening Brief and this Reply Brief, the City respectfully requests this Court to affirm the Hearing Examiner’s decision that the City’s Stop Work Order was supported by substantial evidence. The City also requests this Court to characterize the

City's action as enforcement of the Building Permit, which Ex. CC clearly demonstrates that it was, not as rescission of the Shoreline Exemption, and thereby correct the Examiner's inaccurate description of the City's action as "effectively rescind[ing] the shoreline exemption."

RESPECTFULLY SUBMITTED this 15th day of August, 2007.

CITY OF BREMERTON



Roger A. Lubovich, WSBA #8942
City Attorney
City of Bremerton
345 6th Street, 6th Floor
Bremerton, WA 98337
Telephone: (360) 478-5290
Facsimile: (360) 478-5161

FOSTER PEPPER PLLC



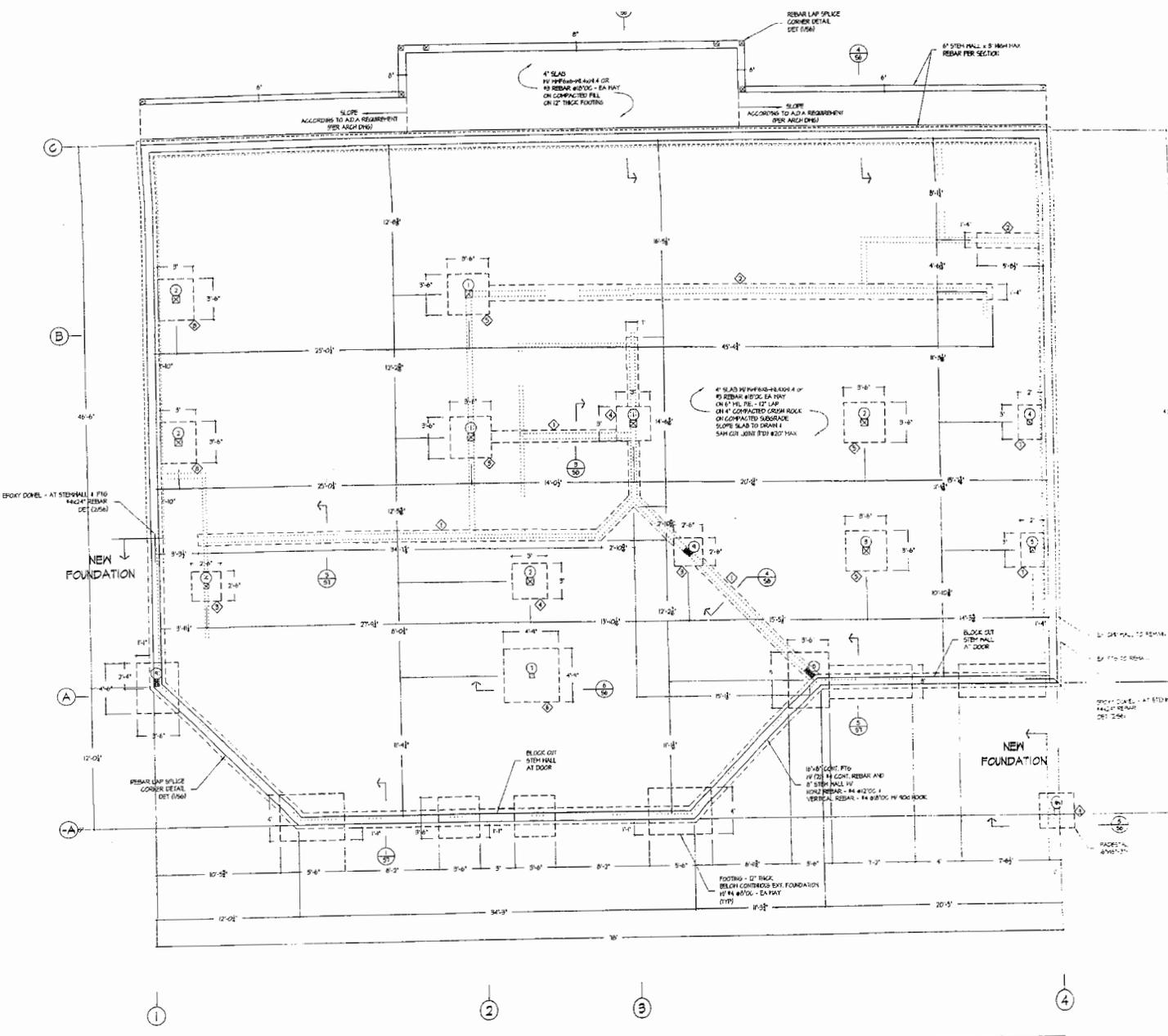
Richard L. Settle, WSBA #3075
Attorneys for Appellant
City of Bremerton
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299
Telephone: (206) 447-4400
Facsimile: (206) 447-9700

APPENDIX 1

EX. H, SHEET 1



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BIRMINGHAM DEPT. OF
COMMUNITY DEVELOPMENT



FOOTING SCHEDULE						
ID	WIDTH (FT)	LENGTH (FT)	DEPTH (FT)	TOP REBAR EACH WAY	BOTTOM REBAR EACH WAY	*ASCE 318.2.1.1.1
1	1'-0"	CON.	12"	3-#4 CON.	2-#4 CON.	
2	1'-4"	CON.	12"	3-#4 CON.	2-#4 CON.	
3	2'-4"	3'-0"	12"	N.A.	N.A. @ 20"	
4	3'-0"	3'-0"	12"	N.A.	N.A. @ 20"	
5	3'-6"	3'-6"	12"	N.A.	N.A. @ 20"	
6	4'-4"	4'-4"	12"	N.A.	N.A. @ 20"	
7	3'-0"	3'-0"	12"	N.A.	N.A. @ 20"	
8	3'-0"	3'-0"	12"	N.A.	N.A. @ 20"	

NOTATION:
1" = 1' FOR ALL DIMENSIONS UNLESS NOTED OTHERWISE

NOTE:
- CONTRACTOR SHALL REVIEW GEOTECHNICAL REPORT PRIOR TO ANY CONSTRUCTION
- FOOTING DEGREE SHALL BE PROVIDED AROUND THE BUILT FOOTING PERIMETER AND COLUMN PER SHALL BE PLACED 2" LOWER WITH RESPECT TO BOTTOM OF FOOTING
- BLOCK OUT STEEL WALL FOR DOORS
- HOLD DOWN TYPE 1 HEPBOLL ANCHOR UNLESS OTHERWISE NOTED PER SHEARWALL PLAN
- REBAR BOTTOM CLEARANCE = 3" & ALL REBARS SHALL BE GRADE 60

COLUMN SCHEDULE - AT INTERIOR BEAM				
ID	COLUMN	BASE	CAP	
1	2x8 DPF2	ASUB	N.A.	
2	2x8 DPF2	ASUB	CG0085025	
3	2x8 DPF2	ASUB	CG0085025	
4	2x8 DPF2	ASUB	CG0085025	
5	2x8 DPF2	ASUB	CG0085025	
6	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
7	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
8	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
9	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
10	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
11	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
12	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
13	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
14	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
15	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
16	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
17	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
18	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
19	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
20	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
21	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
22	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
23	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
24	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
25	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
26	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
27	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
28	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
29	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
30	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
31	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
32	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
33	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
34	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
35	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
36	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
37	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
38	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
39	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
40	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
41	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
42	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
43	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
44	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
45	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
46	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
47	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
48	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
49	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD
50	12x8x16x36	12x16x36 PLT	CG0085025	18" CORN. FILLET FIELD

FOUNDATION PLAN - NOTE: HOLDDOWN LOCATION SHOWN ON SHEARWALL PLAN



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BIRMINGHAM DEPT. OF
COMMUNITY DEVELOPMENT

CLIFF SIDE REMODEL
2054 HEATON WAY
BIRMINGHAM, AL 35202
FOUNDATION PLAN

DATE: 08/17/2005
JOB NO: 200502005
DRAWN BY: WATSON
REVISED: 08/23/2005

CLIFF SIDE REMODEL
2054 HEATON WAY
BIRMINGHAM, AL 35202
FOUNDATION PLAN

REVISED: 08/23/2005

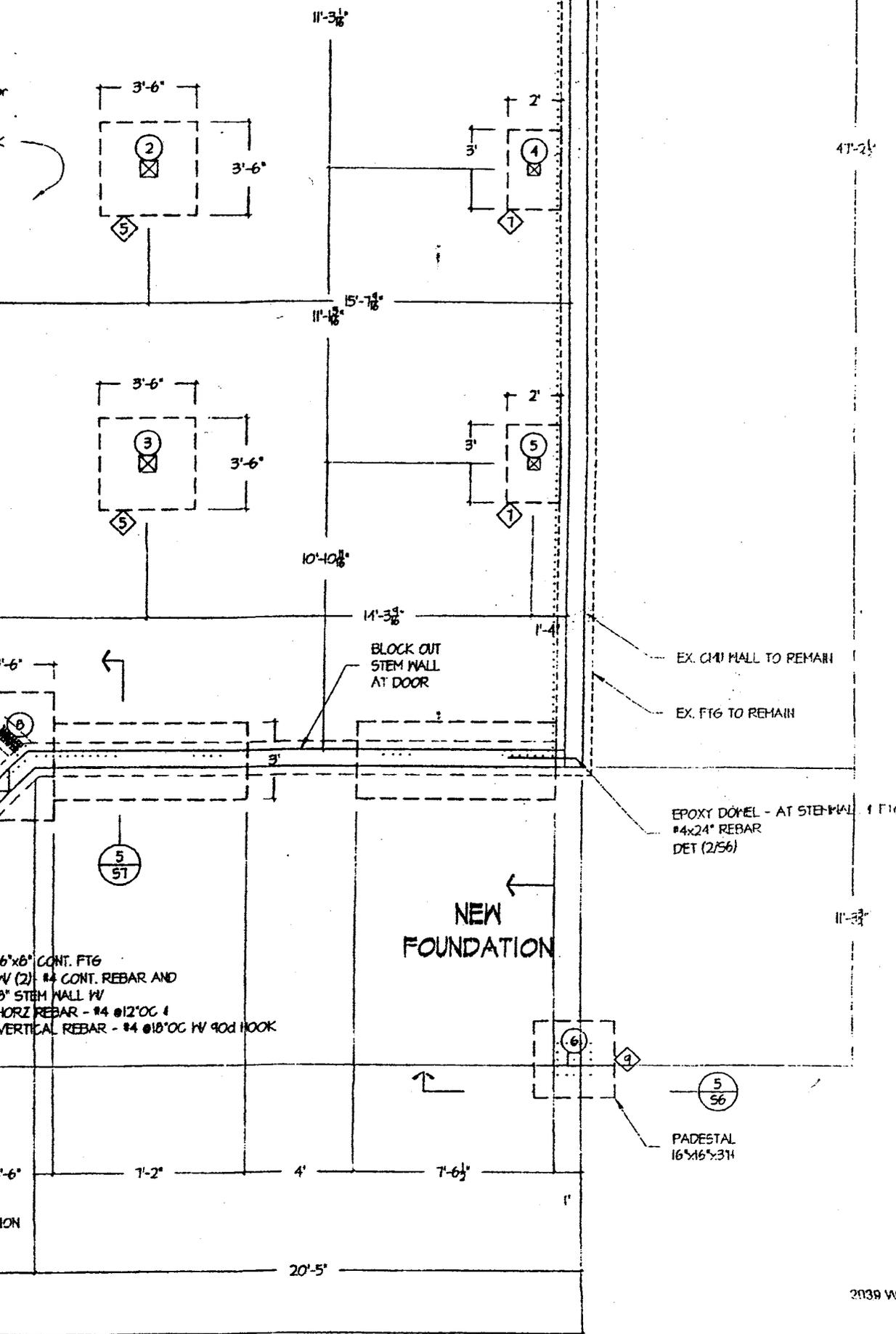
Exhibit H

APPENDIX 2

**EX. H, SHEET 1,
MAGNIFICATION OF PLAN
NOTATIONS**

NOTATION:
 (> M = MONOLITHIC POUR

- NOTE:
- ~ CONTRACTOR SHALL REVIEW
 - ~ FOOTING DRAIN SHALL BE AND DRAIN PIPE SHALL BE
 - ~ BLOCK OUT CONCRETE STE
 - ~ HOLD DOWN TYPE & MUDSI
 - ~ PER SHEARWALL PLAN
 - ~ REBAR BOTTOM CLEARAN



COLUMN SCHEDULE	
ID	COLUMN
1	6x6 DF#2
2	6x6 DF#2
3	6x6 DF#2
4	6x6 DF#2
5	6x6 DF#2
6	TU 6x6x3/16
7	TU 5x5x3/16
8	(8)-2x6 DF#2 BUILT-UP COL
9	(6)-2x6 DF#2 BUILT-UP COL

CLIFF SIDE REMODEL
 2039 WHEATON WAY - BREMERTON, WA



APPENDIX 3

EXHIBIT AA

BUILDING PERMIT



**CITY OF BREMERTON
DEPARTMENT OF COMMUNITY DEVELOPMENT**

PERMIT NUMBER BB05 00626
DATE ISSUED: 02/09/2006

345 - 6th Street, Bremerton, WA 98337
(360) 478-5275 Fax: (360) 478-5278

ASSESSOR NUMBER:	3976-030-034-0001	ZONING:	SMU	SITE ADDRESS:	2039 WHEATON WAY
APPLICANT NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383
OWNER NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383
CONTRACTOR:	BIG SKY ENTERPRISES INC	PHONE:	(360) 308-9884	ADDRESS:	10715 SILVERDALE WAY STE 203, SILVERDALE WA 9837
LENDER NAME:		PHONE:	(-)	ADDRESS:	
SUBMITTED:	09/21/2005	APPROVED:	02/09/2006	EXPIRATION:	08/08/2006
				STATUS:	ISSUED

VALUATION:	\$350,000.00	Commercial Building Permit w/ Mechanical/Plumbing
Mechanical Fixture Fee	\$201.35 2215	INTERIOR REMODEL TO BLDG FOR NEW RESTAURANT CALLED "CLIFFSIDE"
Building Permit	\$2,393.75 2211	
Plan Review Fee	\$1,555.94 4580	Building Code Edition: IBC: 2003
Plumbing Fixture Fee	\$386.00 2213	Occupancy Group:
State Surcharge	\$4.50 0236	Type of Construction:
TOTAL FEES:	\$4,541.54	Flood Zone:
		Setbacks: (Front) (Side) (Rear) (Other)
		Sanitation Method:
		Number of Bedrooms:

Square Footage: Bid Price from Applicant 1 TOTAL

Inspection Requests		Fire Inspections	(360) 473-5380
DCD: Building Inspections	(360) 473-5870	H/D: Bremerton, Kitsap County Health District	(360) 337-5285
L&I: Department of Labor and Industries	(360) 415-4000	PW: Department of Public Works	(360) 473-5270

This permit shall become null and void if the described and authorized by this permit has not commenced within 180 days from the date of issuance, or if the work is suspended or abandoned at any time after the work is commenced for a period of 180 days. It is the responsibility of the permit holder to see that the required inspections are made. Failure to obtain required inspections may result in stoppage of the work until such time that the permit holder can substantiate to the City of Bremerton that the concealed work meets or exceeds code requirements. Any demolition, testing, or financial burden shall be borne directly by the permit holder. Failure to substantiate code requirements will indemnify the City against any and all responsibility or liability connected with the construction. I hereby certify that I have read and examined this permit and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel provisions of any State or local law regulating construction or the performance of the construction. If listing the owner as general contractor, I certify that I am exempt from the requirements of the State Contractor's Registration Law under Section 3, Chapter 126, Laws of 1967. All revisions to an approved plan require DCD review and approval prior to performing work. All building and tenant occupancy permits are required to pass final inspection prior to permit expiration and obtain a certificate of occupancy prior to use or occupancy.

I have read, and agree to abide by the conditions of this permit including all conditions of zoning, building codes, and State and Federal laws.

SIGNATURE OF OWNER OR AGENT:

PRINTED NAME:

Andrew R. Granton
ANDREW R. GRANTON

DATE:

2/9/06

CONDITIONS

City of Bremerton's approval of this application pertains only to the City's regulatory jurisdiction, and thus compliance with City regulations does not necessarily ensure compliance with federal or state laws.

1. (CROSS-01) Cross Connection: Install an approved reduced pressure backflow assembly on domestic water supply where supply enters building. No connections are allowed upstream of assembly. Backflow assemblies are also required on individual fixtures as needed. A cross connection (source of potential contamination to domestic water supply) inspection is required prior to issuance of a Certificate of Occupancy. Contact Earl Varner at (360) 473-5927 to request an inspection. (c)
2. (CROSS-02) Cross Connection: All irrigation systems shall, whenever possible, have separate service lines and separate meters. All irrigation systems shall have an approved double detector check valve assembly, or assemblies, for each connection to potable water. Approved assemblies are assemblies on the current Washington State Department of Health approved assembly list. (d)
3. (CROSS-03) Cross Connection: All approved assemblies must be tested by a certified Washington State backflow assembly tester at the time of installation, whenever serviced or moved, and annually thereafter. For more information or to schedule an inspection, please call Bremerton Cross Connection Control, 473-5927. No meters will be set without prior installation. (e)

Exhibit AA



**CITY OF BREMERTON
DEPARTMENT OF COMMUNITY DEVELOPMENT**

PERMIT NUMBER BB05 00626
DATE ISSUED: 02/09/2006

345 - 6th Street, Bremerton, WA 98337
(360) 478-5275 Fax: (360) 478-5278

ASSESSOR NUMBER:	3976 030 034-0001	ZONING:	SMU	SITE ADDRESS:	2039 WHEATON WAY
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CONTRACTOR:	BIG SKY ENTERPRISES INC	PHONE:	(360) 308-9884	ADDRESS:	10715 SILVERDALE WAY STE 203, SILVERDALE, WA 9837
LENDER NAME:		PHONE:	()	ADDRESS:	
SUBMITTED:	09/21/2005	APPROVED:	02/09/2006	EXPIRATION:	08/08/2006
				STATUS:	ISSUED

inspection, and approval by Bremerton Cross Connection Control.

4. (DCD-01) DCD: Prior to performing any renovation or demolition work, Puget Sound Clean Air Agency (Clean Air Agency) and Washington Department of Labor and Industries (L&I) regulations require an asbestos survey be performed to determine whether there are asbestos-containing materials in the work area or structure. The asbestos survey must be conducted by and EPA-certified (AHERA) building inspector (except renovation or owner-occupied single family residences).DCD: For more information, please contact Clean Air Agency through their web site at www.cleanair.org or by phone at 800-552-3565 or 206-689-4058. The L&I web site can be found at www.lni.wa.gov/p-ts/asbestos/asbestos.htm.
5. (DCD-02) DCD: Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Washington State Building code or of any other ordinance of the City of Bremerton. Permits presuming to give authority to violate or cancel the provisions of the Washington State Building code or other ordinances of the City of Bremerton shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of the Washington State Building code or of any other ordinances of the City of Bremerton.
6. (DCD-14) DCD: Approved Plans, Engineering, Site Plan, Permit, and Conditions, Shall remain on site and be available for inspection.
7. (DCD-22) Building Plan Review:
Code Compliance-All work in the City of Bremerton shall adhere to the following
2003 International Codes:
International Building Code
International Residential Code
International Existing Building Code
International Fire Code
International Mechanical Code
Uniform Plumbing Code
International Fuel Gas Code
1998 WA State Barrier Free Code
2001 WA State Energy Code
2000 WA State Ventilation Code
Check For All Washington State Amendments.
Check For Notes On Plan
8. (ENGR-1006) ENGR: Provide a Floodplain Certification by a Licensed surveyor. Or a surveyor or engineer certification on a plan or profile identifying elevation of the lowest floor in the existing or proposed remodeled structure and floodplain elevation is acceptable in this instance.
9. (FIRE-01) FIRE: Fire Protection systems shall comply with:
International Fire Code-IFC
International Building Code-IBC
National Fire Protection Assoc.-NFPA
Bremerton Municipal Code-BMC

FIRE: No Double Keyed Deadbolts. On required exit doors, doors are not allowed to be secured with locks requiring a key from the inside to open the lock.
IFC 1008.1.8.3 (2.3)
Fire: Copies of fire ordinances and Bremerton Municipal Codes are available at the City's website, www.ci.bremerton.wa.us. To reach Scott Rappleye, call 360-473-5384 or e-mail at srappleye@ci.bremerton.wa.us. To reach Jim Hardy, call 360-473-5385 or e-mail at jhardy@ci.bremerton.wa.us. To reach Mike Six, call 473-5284 or

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CITY OF BREMERTON
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LENDER NAME:		PHONE:	()	ADDRESS:			
SUBMITTED:	09/21/2005	APPROVED:	02/09/2006	EXPIRATION:	08/08/2006	STATUS:	ISSUED

Michael.Six@ci.bremerton.wa.us

FIRE: Address numbers shall be sized depending on the distance of the building, from the street:

0-50' from the street: Number size shall be 6-12" minimum height;
50' to 100' from street: Number size shall be 12-18" minimum height;
Greater than 100' from street: Number size shall be 18-24" minimum height;
IFC/BMC 505.1.1

FIRE: Provide Fire Extinguishers per IFC Section 906.

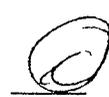
10. (FIRE-04)

FIRE: Fire Alarm Systems
Fire Alarm Systems must be addressible unless <10 devices
All compenents must be listed for intended use
Pull stations must be located at each exit and within 5' of that exit
A Horn Strobe is required outside the extrance closest to the panel.
Strobes must be synchronized
A Knox Box is required with a Fire Alarm System



11. (FIRE-07)

FIRE: Knox Box: A Knox Box is required to provide Fire Department Access:
Commercial: 3200 series Knox Box
Commercial: (>10 keys/elevator) 4400 Knox Vault
Commercial: (multi-story/MSDS sheets, Pre-fire plans, Haz-Mat data, Key Storage)
require 1300 series Knox Cabinet
Gates:w/ occupants behind gate. Opticom/Knox key switch 3500 series.
Gates:w/out occupants behind Knox Padlock 3750 series.
Residential: 1650 series Knox Box (<5 units)
IFC 506.1



12. (FIRE-08)

FIRE: An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.
IFC 508.1



13. (FIRE-09)

FIRE: Provide fire alarm system to NFPA 72 and sprinklers to NFPA 13 standards. Fire alarm shall have an annunciator inside the entrance, horn strobe shall be provided on the outside of the building, above the Knox Box. All sprinkler systems shall be monitored by UL listed central station.



14. (FIRE-10)

FIRE: Provide fire hydrants and fire flow per International Fire Code Appendix B and C. Hydrants shall be color-coded and provide with 5" storz adapter and BLUE road reflectors to Bremerton standard. Contact Bremerton Municipal Utilities at 360-473-5249 for more information.



15. (FIRE-11)

Fire: Exits shall meet all requirements of 2003 International Building Code Chapter 10.



16. (FIRE-12)

FIRE: Identification. Fire protection equipment shall be identified in an approved manner. Rooms containing controls for air-conditioning systems, sprinkler risers and valves, or other fire detection, suppression or control elements shall be identified for the use of the fire





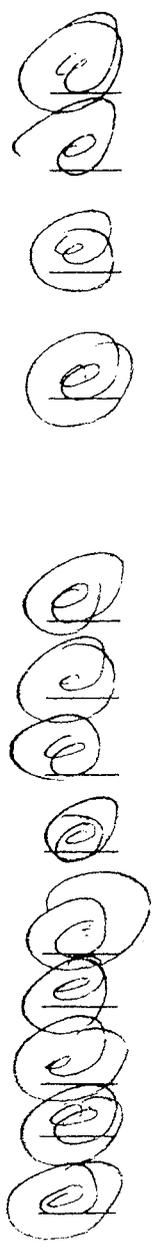
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LENDER NAME:		PHONE:	(-)	ADDRESS:	
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- 17. (FIRE-13) department. Approved signs required to identify fire protection equipment and equipment location, shall be constructed of durable materials, permanently installed and readily visible. IFC 510.1
FIRE: Buildings or Structures shall not be occupied prior to testing of all fire protection systems and Fire Marshal approval.
IFC 105.3.3
- 18. (FIRE-14) FIRE: Fire Inspections required. Before a new operational permit is approved, the fire code official is authorized to inspect the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used to determine compliance with IFC/IBC/BMC.
IFC 105.2.2
- 19. (FIRE-16) FIRE: Type I suppression hood is required to meet UL300 standards. Suppression system shall be interfaced with fire alarm system to provide monitoring (if a alarm system is required in the building). Hood must be tested prior to final occupancy approval. Provide test records. K-class fire extinguisher is required and shall be mounted <30' of cooking top.
IFC 610.2
- 20. (FIRE-18) FIRE: Hydrants where required. All buildings or structures shall be located so that there is at least 1 hydrant within 150 feet, and no portion of the building or structure is more than 300 feet from a hydrant, as measured by an approved route.
Exceptions:
1. For Group R-3 and Group U occupancies the distance required shall be 600 feet (183m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m)
IFC 508.5.1
- 21. (FIRE-20) FIRE: Required Automatic Sprinkler System shall be designed, installed, maintained, tested in accordance NFPA 13.
IFC 903.2
- 22. (FIRE-21) FIRE: All Fire Alarm systems shall be pretested prior to scheduling an inspection with the Fire Marshals office. All Pretest record shall be made available to Fire Marshal at the time of inspection.
- 23. (FIRE-23) FIRE: Acceptance tests required for sprinkler systems, underground flush/hydro and sprinkler system hydro/head placement approval shall be completed before sheetrock installation and prior to final inspection and sprinkler testing
- 24. (FIRE-26) FIRE: Dumper Capacity exceeding 1.5 cubic yards. Dumpsters and containers with an individual capacity of 1.5 cubic yards or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings or combustible roof eave lines.
IFC 304.3.3
- 25. (FIRE-30) FIRE: L&I electrical certification-Shall be provided for both electric and fire alarm panels prior to final occupancy.
- 26. (FIRE-31) FIRE: Fire apparatus access roads shall be marked whenever necessary to maintain the unobstructed minimum required width of roadways.
IFC/BMC 503.3 (specific details provided on the City Website)
- 27. (FIRE-32) FIRE: Building Plans on CD-Provide building plans on CD to be used as needed for pre-fire planning.
- 28. (FIRE-36) FIRE: Alterations/Repairs/Additions: Existing structures shall be considered new construction if the cost of alterations/repairs/additions exceeds 50% of the county assessed valuation over a 70 month timeframe. At that time the entire building is required to meet the current codes.
- 29. (FIRE-37) Fire departments connection locations. All fire department connection locations (F.D.C.'s) to automatic sprinklers and/or standpipe systems shall be located not less than 3 feet, nor more than 10 feet from the finished edge of an approved fire apparatus access road. F.D.C.'s shall not be located more than 50 feet from a fire hydrant.
IFC 903.3.7/ Section 912 IFC/BMC





**CITY OF BREMERTON
DEPARTMENT OF COMMUNITY DEVELOPMENT**

PERMIT NUMBER BBO5 00626
DATE ISSUED: 02/09/2006

345 - 6th Street, Bremerton, WA 98337
(360) 478-5275 Fax: (360) 478-5278

ASSESSOR NUMBER:	3976-030 034-0001	ZONING:	SMU	SITE ADDRESS:	2039 WHEATON WAY
APPLICANT NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383
OWNER NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383
CONTRACTOR:	BIG SKY ENTERPRISES INC	PHONE:	(360) 308-9884	ADDRESS:	10715 SILVERDALE WAY STE 203, SILVERDALE, WA 98377
LENDER NAME:		PHONE:	(-)	ADDRESS:	
SUBMITTED:	09/21/2005	APPROVED:	02/09/2006	EXPIRATION:	08/08/2006
				STATUS:	ISSUED

- 30. (FIRE-39) FIRE: Post Occupant Load-The Occupant load shall be posted in assemblies 50 or greater. IFC 1004.3
- 31. (GREASE) An approved exterior grease interceptor is required at all facilities that may discharge fats, oils, and grease into the sanitary sewer system. No grease interceptor shall be less than 1500 gallons. All drains from kitchen area shall discharge into grease interceptor including hand wash sinks, floor drains, mop sinks, dish washers and three compartment sinks. Use the UPC appendix H for sizing. Contact Earl Varner at (360) 473-5927 for grease trap/interceptor requirements.
- 32. (Project-Specific) Development is for interior remodel of the restaurant, including replacing the roof in its current configuration, installation of sprinklers and ADA accessible amenities, installation of a new curb, gutter, sidewalk, streetlights, and landscaping. In addition development includes repaving, top-coating and restriping the existing parking lot abutting the restaurant). Any work outside of this scope requires additional review and approval.
- 33. (Project-Specific) 21 parking spaces are required (BMC 21.02, Figure 670(b)). Stalls shall be developed pursuant to BMC 21.02.610.
- 34. (UTILITY-02) All utility fees and assessment shall be paid prior to final occupancy approval
- 35. (WATER-01) Water service requires a upgrade. Calculate the fixtures to size with the service required for this building.

MINIMUM INSPECTIONS REQUIRED

Inspection requests must be received by 8:00am in order to be scheduled for same day. To request an inspection, please call (360) 478-5275 and be sure to provide your permit number, name on permit, site address, contact phone number, and inspection type.

- Foundation Footings
- Foundation Walls
- Mechanical
- Plumbing Groundwork
- Plumbing Rough-In
- Framing
- Insulation
- Sheetrock Nailing
- Driveway
- Sewer Lateral
- Final Inspection - Fire
- Final Inspection - Cross Connection
- Driveway approach
- Final Inspection - Public Works
- Floodplain Certificate Final
- Final Inspection - Zoning
- Final Inspection - Building

FIXTURE LIST

Qty	Description	Qty	Description
1	C-Grease Interceptor	2	Gaspipe System LPG/NATL/OIL
17	Sink (Lavatory, Kitchen, Mop or Bar Sink)	6	Miscellaneous Mechanical Equipment
1	Hose Bibs	1	C-Commercial Furnace & Ducting
2	C-Commercial Dish Washer	1	C-Evaporative Coolers other than portable



**CITY OF BREMERTON
DEPARTMENT OF COMMUNITY DEVELOPMENT**

PERMIT NUMBER BB05 00626
DATE ISSUED: 02/09/2006

345 - 6th Street, Bremerton, WA 98337
(360) 478-5275 Fax: (360) 478-5278

ASSESSOR NUMBER:	3976-030-034-0001	ZONING:	SMU	SITE ADDRESS:	2039 WHEATON WAY		
APPLICANT NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383		
OWNER NAME:	WEBG LLC	PHONE:	(360) 271-8266	ADDRESS:	9057 WASHINGTON AVE, SILVERDALE, WA 98383		
CONTRACTOR:	BIG SKY ENTERPRISES INC	PHONE:	(360) 308-9884	ADDRESS:	10715 SILVERDALE WAY STE 203, SILVERDALE, WA 9837		
LENDER NAME:		PHONE:	()	ADDRESS:			
SUBMITTED:	09/21/2005	APPROVED:	02/09/2006	EXPIRATION:	08/08/2006	STATUS:	ISSUED

2	C-Commercial Water Heater	1	C-Commercial Furnace & Ducting greater than 100
8	C-Water Closet and/or Urinal	4	C-Bath Fan and/or Exhaust Fan
2	C-Backflow Device more than 2" diameter	2	C-Class 1 Hood & Duct Systems
17	C-Floor Sink and/or Indirect Waste		

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COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
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DEPUTY

CITY OF BREMERTON

Appellant,

v.

WEBG, LLC,

Respondent.

No. 36003-9-II

DECLARATION OF SERVICE

Elizabeth A. Johns declares as follows:

I am a legal assistant to Richard L. Settle, and I have personal knowledge of the facts in this declaration and am competent to testify thereto.

I hereby certify that, on August 15, 2007, I caused a true and correct copy of Appellant City of Bremerton's Reply Brief, and this Declaration of Service to be served on the following, in the manner indicated:

William Broughton
Broughton & Singleton, PS
9057 Washington Avenue N.W.
Silverdale, WA 98383
bill@bbroughtonlaw.com

By U.S. Mail, First Class
Postage Prepaid
 Via E-Mail

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

EXECUTED at Seattle, Washington this 15th day of August, 2007.


Elizabeth A. Johns

ORIGINAL