

Honorable Ken Schubert

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KING COUNTY SUPERIOR COURT

IRENE WALL and ROBERT MORGAN,
Petitioners,

NO. 18-2-21317-7 SEA
ORDER OF REMAND

v.

CITY OF SEATTLE, a Washington
Municipal Corporation; and 70th &
GREENWOOD AVE, LLC and OJD, LLC,
Washington limited liability companies,

Respondents.

This matter came before the Court on the Land Use Petition of Irene Wall and Robert Morgan seeking review of a Contract Rezone and Property Use and Development Agreement approved by the Seattle City Council for property owners, 70th & Greenwood Ave, LLC and OJD, LLC for a development under Master Use Permit (MUP) number 3023260, referred to as Shared Roof. Petitioners Irene Wall and Robert Morgan appeared through Jeffrey Eustis of the Law Offices of Jeffrey M. Eustis, PLLC. The City of Seattle appeared

1 through the City Attorney and Assistant City Attorney Patrick Downs. The
2 property owners appeared through Katie Kendall and Jessica Clawson of
3 McCullough Hill Leary, P.S.

4 Petitioners challenge the City Council's approval of the Contract Rezone
5 and Development Agreement on grounds that the rezone of the site and the
6 development approved through the Property Use and Development Agreement
7 are contrary to law by: violating setback and height restrictions; failing to
8 provide a gradual transition between commercial and residential zoning
9 districts; unlawfully changing the use of a vacant single family property (Parcel
10 2877104127); and constituting an unlawful spot zone. See Land Use Petition at
11 ¶¶ 7.1-7.6.
12

13 Based upon Petitioners' opening and reply memoranda, the responsive
14 memorandum of the City and the property owners, the City's decision record,
15 and the argument of counsel presented on February 8, 2019, the Court grants
16 Petitioners' Land Use Petition claim ¶7.1 that the Contract Rezone and
17 Development Agreement were approved in violation of SMC 23.34.009.D.2 for
18 failure to provide a gradual transition or a major physical buffer between the
19 development approved for the Neighborhood Commercial zoned lots (Parcels
20 287710-4085 and 287710-4100, the "commercial lots") and the single family
21 residential Lot at 7010 Palatine Avenue North (Parcel Number 287710-4120,
22 the "7010 Palatine property.") Now therefore,
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25 IT IS HEREBY ORDERED:

ORDER OF REMAND - 2

1 1. Pursuant to RCW 36.70C.140, the contract rezone approval and
2 Property Use and Development Agreement is hereby remanded to the City
3 Council for the limited purpose of addressing compliance SMC 23.34.009.D.2 in
4 one of the following ways, at the option of Respondent 70th and Greenwood
5 Ave, LLC:

6 a. Amend the Property Use and Development Agreement to require
7 that the proposed open space or greenspace between the existing single-family
8 home on Parcel Number 2877104120 and the Commercial Parcels be
9 maintained in perpetuity as shown on the plans for the MUP Number 3023260;

10 **or**

11
12 b. Modify the Project to provide a gradual transition in height and
13 scale in accordance with SMC 23.34.009.D.2 from the portion of the
14 Commercial Parcels fronting Parcel Number 2877104120 to this parcel.

15 2. In all other respects the claims within Petitioners' Land Use
16 Petition are denied.

17 3. Pursuant to RCW 36.70C.140, the Court retains jurisdiction over
18 this matter in order preserve the interests of the parties, pending further
19 proceedings or action by the City of Seattle.

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21 Done this 5th day of March, 2019.

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24 _____
25 Honorable Ken Schubert
Superior Court Judge

1 LAW OFFICES OF
JEFFREY M. EUSTIS, PLLC

2

3 /s/ _____
Jeffrey M Eustis, WSBA #9262
4 Attorney for Petitioners

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6 CITY OF SEATTLE
7 CITY ATTORNEY'S OFFICE

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9 _____
Patrick Downs, WSBA No. #25276
Attorneys for Respondent City of Seattle

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MCCULLOUGH HILL LEARY, PS

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Katie Kendall, WSBA #48164
Attorneys for Respondents
14 70th & Greenwood Ave, LLC and OJD, LLC

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King County Superior Court
Judicial Electronic Signature Page

Case Number: 18-2-21317-7
Case Title: WALL ET ANO VS SEATTLE CITY OF ET AL

Document Title: ORDER OF REMAND

Signed by: Ken Schubert
Date: 3/6/2019 3:22:08 PM

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'K. Schubert'.

Judge/Commissioner: Ken Schubert

This document is signed in accordance with the provisions in GR 30.

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O=KCDJA, CN="Ken Schubert:
EPj/VAvS5hGqrSf3AFk6yQ=="