

THE HONORABLE BARBARA A. MACK

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BENDARE DUNDAT, INC.,

Plaintiff, and

MASTER BUILDERS ASSOCIATION OF KING
AND SNOHOMISH COUNTIES,

Intervenor

vs.

THE CITY OF SEATTLE,

Defendant.

NO. 16-2-08259-9 SEA

DECLARATION OF GRAHAM BLACK
IN SUPPORT OF INTERVENOR
MASTER BUILDERS ASSOC.'S
RESPONSE IN OPPOSITION TO CITY
OF SEATTLE'S CROSS MOTION FOR
SUMMARY JUDGMENT

I, Graham Black, declare and state under the penalty of perjury under the laws of the State of Washington, as follows:

1. I am the principle and managing member of gprojects, am competent to testify, and have personal knowledge of the matters asserted herein. gprojects is a member of Master Builders Association of King and Snohomish Counties. This declaration is made in support of Intervenor Master Builders Association's Response in Opposition to the City of Seattle's Motion for Summary Judgment.

2. gprojects builds between ten to twenty-five homes per year, usually across three to four sites. These homes are typically townhomes. All our sites are in the City of Seattle. Gprojects has been in business for 15 years and is an award winning home builder.

3. Through gprojects, I own property located at 2707 Yestler Way (the "2707 Property"). Before entering into a purchase and sale contract, I confirmed utility availability and that Seattle zoning regulations allow for a 6-unit townhome development. The property is in a competitive location, so I engaged in a contract for a nonrefundable \$50,000 earnest

1 money and traditional closing schedule. While I was waiting to close, my architect found out
2 another developer was pretty far down the road in preparing an application to develop the
3 property next door, 2703 Yesler Way, which is immediately adjacent to my property. I asked
4 my architect and consultant team to expedite our plans, but it was impossible to get our
5 application submitted before that for the 2703 Yesler Way property. As a result, my 2707
6 Property is subject to design review and SEPA as a result of the City's regulation at issue in
7 this lawsuit. My competitor's project is not.

8 4. I have been through full design review in Seattle three times. Based on my
9 experience, design review adds \$50-80,000 in architecture and consultant fees. In addition,
10 City processing fees are roughly \$20-30,000. The process adds at least four months, but is
11 entirely unpredictable and without any deadlines. As a result, I have to carry the extra interest
12 for the property and experience lost opportunity costs, which can be a significant expense in
13 the city. Merely because the adjacent developer was able to submit before me, I must spend at
14 least \$70-\$100,000 in addition to the unpredictability of the review process.

15 5. My personal experience, and my experience in working with developers over
16 the decades is that developers will be disincentivized from taking on projects on abutting lots
17 such as the 2707 Property. I will look elsewhere for other property to build on rather than
18 build property that injects this significant amount of cost, time, and unpredictability.

19 6. I do believe that design review can be an effective tool in certain scenarios.
20 Seattle's design review process allows for developers to eliminate or adjust certain land use
21 controls and therefore build better projects. Design review allows "departures," which are best
22 thought of as an agreed upon variance, from otherwise established setbacks, structure depth
23 requirements, and separation between buildings to name just a few. This can, and in my
24 experience always has, allowed for more massing closer to the rights of way and neighboring
25 properties. Tradeoffs for such departures might include considerations as installing solar

1 panels or passive energy systems, using reclaimed materials or providing other enhanced
2 environmental building techniques. These are expensive additions to a project, but may be
3 necessary when in the design review process. In other words, while the costs are significant to
4 a developer, the City has built-in incentives to make design review more palatable. In my
5 experience, however, the expense, time, and uncertainty of the design review process is
6 something that we weigh against what we can get out of the process in terms of reduced and
7 waived land use controls. The point is, however, that it is a business decision that **we make**.
8 We know that taking on a project which triggers design review has added costs and time and
9 uncertainty, but for large projects (which previously was the trigger, speaking generically) the
10 departures were a handy tool. In contrast, and under the regulation at issue, we cannot know in
11 advance if our project is going to trigger design review. A key business decision – to go into
12 DR or not - is now a matter of chance. My six unit project at Yesler can be a good project
13 without DR, but now I might be forced into the process. But to push all property uniformly
14 due to circumstances totally unrelated to the property itself, is a nonsensical use of design
15 review and does not address neighborhood impacts.

16 7. Now that Seattle's regulation will require the 2707 Property to under design
17 review, I am aware of the significant costs and timeline delays. As a result, I will redesign the
18 project to at least try to obtain reduced setbacks or increase allowable structure depth as I will
19 have to undergo design review due to my neighbor having submitted its development
20 application first. Because I am second in line by random chance, I am at a significant
21 competitive disadvantage so intend to re-design my project for the 2707 Property such as
22 reduced setbacks, in order to have a higher price-point development and recoup at least a small
23 portion of the financial costs of delay and involved design review.


24 8. The existence of Seattle's regulation affects my choice as to what property I
25 will enter into a contract to purchase and develop. I now have to build in the risk of design

1 review in my evaluation of whether to purchase a property and enter into a contract and pay
2 earnest money. The regulation restricts the field of potential developable property that I have
3 to choose from and drives up the prices for the remaining developable properties that would
4 not risk being subject to this regulation. The flip side is also true – the owners of property that
5 is adjacent to property that is being developed, or has applied for early permits, is going to be
6 devalued by developers like me, reducing its value. The regulation makes even this equation
7 unpredictable as there is no way for me to know when a property is the abutting property
8 which would have to undergo design review due to another development application.

9 9. I seriously question how having the second project through the gate go through
10 DR gets better design if that is the City's goal. The Design Review Board cannot take away or
11 change any of the land use options the second project already has under the code. It is
12 powerless to change a code compliant project. The set backs, heights, massing, structure depth
13 are not going to change in a way that will benefit neighbors when going through design review
14 based on this regulation. In contrast, the Design Review Board can only recommend that the
15 development team receive departures, which usually have an adverse impact on the neighbors.
16 If the Board does not have a hammer, and there is no carrot for the developer of these smaller
17 sites, then what, really, is supposed to get accomplished? Costs go up and time gets added. No
18 one benefits from that. I believe the City should reserve design review for the complicated and
19 larger projects.

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21 DATED this 8th day of August, 2016, in

22 Friday Harbor, Washington.

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24 _____
25 GRAHAM BLACK