The Honorable Nicole Phelps

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

OOM LIVING, LLC, a Washington limited liability company, and JENNIFER EGUSA WALDEN, Plaintiffs, v. CITY OF SEATTLE, a Washington municipal corporation, and SEATTLE PUBLIC UTILITIES, Defendants.	No. 23-2-14374-4 SEA **SECOND AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF**

Plaintiffs Oom Living, LLC and Jennifer Egusa Walden plead and allege as follows:

INTRODUCTION

Oom Living, LLC is a small, woman-founded and operated company that has been developing quality custom homes in the Seattle market since 2014. Oom Living's housing products implement recent state and local efforts to address the region's well-documented housing crisis by increasing urban density within existing residential neighborhoods, including the construction of affordable detached accessory dwelling units ("DADUs"). Here, the project that is the subject of this Complaint seeks to

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demolish two outmoded residences and replace them with three modern, custom residences and accompanying DADU's for a total of six new units.

Plaintiffs Oom Living and Jennifer Walden (collectively "Oom Living") bring this Complaint to prevent the City of Seattle and Seattle Public Utilities (collectively "City") from unlawfully leveraging their permitting authority monopoly to force Plaintiffs to pay for new public infrastructure. Specifically, the City conditioned a Water Availability Certificate to require, and threatens to deny water to the project until, the construction by Oom Living of an inordinately expensive water main extension that is unnecessary to serve the proposed development or any new residences in the vicinity.

The City's demand is driven by its desire to compel a narrow class of property owners, specifically those applying for permits, to provide a pre-determined public benefit that should in all fairness be borne by the public as whole. Specifically, under the pretext of "efficient gridding" of the water system, the City has created a list of public water system improvements that it demands be constructed by permit applicants based on opportunity and permitting process leverage, rather than an individual project's impact on the water supply or system infrastructure.

Not only do the City's demands violate applicable state and local statutes, regulations, and/or policies, but the City's demands also violate the United States Constitution. The Fifth Amendment to the United States Constitution, as specially enforced by the federal doctrine of unconstitutional conditions, protects land use applicants like Oom Living from such coercion by forbidding local government from using the permit process as an opportunity to exact an interest in private property, unless the government first shows that the dedication is necessary to mitigate for an identified

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impact of the proposed development. *See Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Here, however, the City has made no effort to satisfy its burden of demonstrating that its demands satisfy the "essential nexus" and "rough proportionality" requirements of *Nollan* and *Dolan*. Nor could it do so. There can be no "essential nexus" where the existing water system has adequate supply, the lots for the proposed new residences front existing water mains, and tapping into the existing mains will have no measurable, adverse impact on the public. Regardless, the City's demands are also not roughly proportional to any alleged adverse impact, as they require Oom Living to expend approximately $355,000—nearly a third of the overall construction budget for a single residence—to create new, unnecessary public infrastructure. The City's demands are patently unconstitutional.

After continued efforts by Oom Living to obtain relief from the City's extortionate demands, the City has failed to meaningfully address the substance of its objections and has even threatened to withhold temporary water hookups for one of the residences currently under construction. Worse, despite an offer by Oom Living to post a bond for the construction of the water main extension in the event of an adverse ruling for Oom Living in this litigation, the City is threatening to withhold occupancy for, and effectively prevent the sale of, one of the residences unless and until Oom Living first builds the water main extension and pursues this litigation as a post-deprivation remedy for a refund.

This Second Amended Complaint follows.

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I.
PARTIES

1.1 Plaintiff Oom Living, LLC is a Washington limited liability company and the owner of the subject properties.

1.2 Plaintiff Jennifer Egusa Walden ("Jenna Walden") is the managing and majority member of Oom Living, LLC.

1.3 Defendant City of Seattle is a Washington municipal corporation located in King County, Washington.

1.4 Defendant Seattle Public Utilities ("SPU") is a department of the City of Seattle, and is responsible for providing water service to parcels located within the City.

II.
JURISDICTION AND VENUE

2.1 As a court of general jurisdiction, this Court has subject matter jurisdiction under Article IV, Section 6 of the Washington Constitution and RCW 2.08.010.

2.2 Venue is proper in this Court under RCW 4.12.025(1) because this action arose within the City of Seattle, located in King County.

III.
STATEMENT OF FACTS

A. The Properties

3.1 In May of 2022, Plaintiff Oom Living purchased two adjacent lots in West Seattle located at 8004 and 8014 39th Avenue SW, also known as King County Parcel Nos. 2695600425 and 2695600430, respectively (collectively "Subject Properties"). Each lot was improved with a single, outmoded residence.

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3.2 The Subject Properties spanned the entire eastern side of 39th Avenue SW between SW Monroe Street on the north and SW Elmgrove Street on the south, as accurately depicted below.

3.3 The two existing lots were connected to typical utilities, including water service provided by SPU at all times material to this pleading, with 8004 connecting to the main under SW Monroe Street and 8014 connecting to the main under SW Elmgrove Street. There is no water main under this block of 39th Avenue SW.

3.4 The lots on the opposite side of 39th Avenue SW are fully developed and connected to water service as accurately depicted below:

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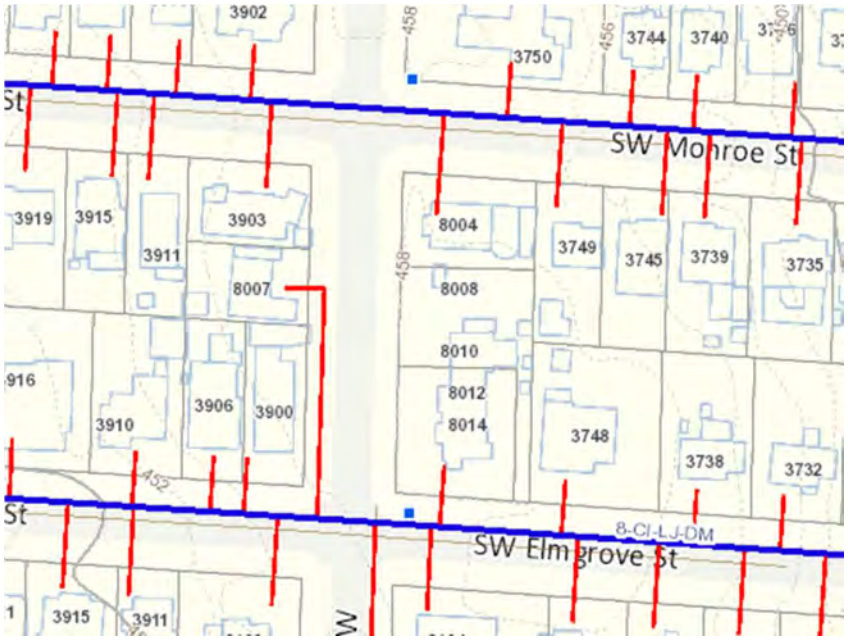

B. Pre-Application and Project Due Diligence

3.5 Following the purchase of the Subject Properties, Oom Living submitted a pre-application request to the City—a mandatory prerequisite to the scheduling of an application intake for the submission of a short subdivision application. Placeholder site plans and designs are often used for the pre-application as the applicant learns more about requirements from the City during the process. These placeholder proposals are updated and replaced when an application is submitted at intake. Applicants use the time between submittal of the pre-application and the intake to finalize their design. It is this period when the Preliminary Assessment Report ("PAR") is issued to the applicant so they understand City policies better and design to that. The request outlined Oom Living's proposed development plans for the Subject Properties. The purpose of the request was to obtain property- and project-specific guidance from the City regarding Oom Living's proposed development.

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3.6 On or about July 26, 2022, the City completed a PAR. According to the City, a PAR includes "information from the utilities about your specific site and proposal" and also identifies "potential project stoppers."

3.7 The PAR issued for Oom Living's project stated the following: 1) "There is no available public storm drain ("PSD") in the street frontage of one or more of the adjusted lots. And extension of the public storm drain may be required across the full street frontage of the adjusted lot/s if required per SMC 22.805.020."; and 2) "Please note that per SPU Policy DWW-160, 'The City does not allow the use of an easement in lieu of an extension of the public storm or sewer system…'".

3.8 Subsequent to receipt of the PAR, Jenna Walden consulted with staff at the Seattle Department of Construction & Inspections ("SDCI") regarding potential options for lot configurations for the anticipated short plat application. For obvious reasons, Ms. Walden desired to identify potential lot configurations that could receive City approval, use resources efficiently, and ensure timely permit processing.

3.9 Using the PAR as the parameters for those discussions, including its reference to SPU Policy DWW-160 (*i.e.*, the policy to avoid access easements for sewer and storm water connections), SDCI and Oom Living settled on a lot configuration that resulted in three lots, specifically 1) one lot largely maintaining the existing 8004 parcel ("Parcel X") at the corner of SW Monroe Street and 39th Avenue SW, and 2) two new lots created from subdividing the former 8014 parcel, namely a new 8104 parcel ("Parcel Z") at the corner of SW Elmgrove Street and 39th Avenue SW, and a new 8008 parcel ("Parcel Y") in between in a flag-lot configuration, with frontage both on 39th Avenue SW and on SW Elmgrove Street with access and utilities taken via a flagstick that ran

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along the east side of Parcel Z. In particular, Parcel Y was configured consistent with SDCI's desire to allow for a more direct sewer connection to SW Elmgrove Street via the flagstick.

3.10 Flag lots are commonly used within the City for infill development. Flag lots often obviate the need for easements by, for example, providing physical access to existing infrastructure, such as roads and utilities, and avoiding potential usage conflicts among adjoining properties. Here, the flag-lot configuration for Parcel Y provides frontage to existing sewer and water lines.

C. Applications, Permits, and the Review Process

3.11 In September of 2022, Oom Living applied for a short plat to subdivide the Subject Properties into a total of three lots. As indicated above, SDCI preferred and encouraged a site plan with lot configurations that utilized a flag lot for Parcel Y. The application that was submitted was consistent with SDCI's preferences. The diagram below accurately depicts the lot configurations that were ultimately approved by the City.

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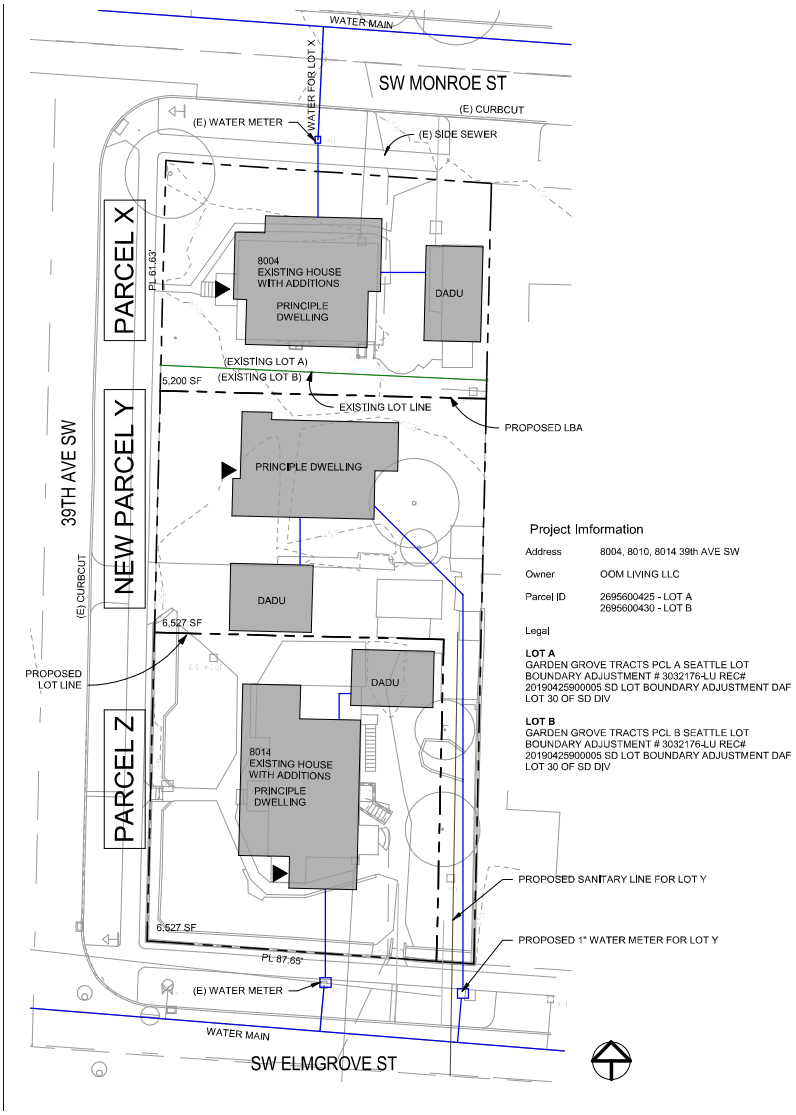

3.12 On March 2, 2023, Oom Living's architect inquired of City staff why the short plat application was apparently not progressing. He received an email from the Development Services Office ("DSO") that stated as follows:

> "We have reviewed the new layout submitted through 3040144-LU. However, a new WAC will not be issued because per Director's Rule WTR-440.VI.C.3.c., Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment. Please let us know if you have any questions."

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3.13 Oom Living was surprised by the email from DSO, as the lot configurations for the new parcels, including Parcel Y, met applicable Code requirements. The email presaged further internal conflict regarding Oom Living's project, as one City department, SDCI, had encouraged Oom Living to create a flag lot in order to meet its specific requirements, whereas another City department, SPU, accused Oom Living of creating a flag lot for the purpose of "avoiding water main installation...requirements." Indeed, the City continues to demonize Oom Living in this very litigation for the creation of a flag lot, when the very design was expressly allowed, preferred, encouraged and ultimately approved by SDCI. This disconnect between SDCI and SPU entraps permit applicants like Oom Living who approach the permit process in good faith, as they can subsequently and unwittingly be subjected by SPU to demands for water system improvements that exceed six figures.

3.14 Per records received in response a recent Public Records Act, it appears that SPU is now coordinating with SDCI to disallow flag lots *in the future*—an arrangement designed to better facilitate the SPU's desire to force permit applicants to expand the City's water main system based on their overall wish list for the system, and not based upon the actual impact to the system for each individual project.

3.15 Per RCW 19.27.097(1), "[e]ach applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building." Evidence of adequate water supply must be accomplished via a discretionary procedure in which the local jurisdiction determines whether, and under what conditions, an owner may access the public water supply. In the

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City, this is done by obtaining a Water Availability Certificate ("WAC") from SPU. Issuance of a WAC is a requirement for new residential development.

3.16 During the pendency of its short plat application, Oom Living sought to secure a WAC for each of its three lots. Applications were submitted in which Parcel X connected to the water main on SW Monroe Street and Parcels Y and Z connected to the water main in SW Elmgrove Street. Per applicable Code, for each of these lots, including Parcel Y, their proposed residence and accompanying DADU only needed to be served by a 1-inch water connection, one of the smallest allowable connections by SPU.

3.17 The City eventually approved WACs for Parcels X and Z. However, efforts to obtain a WAC for Parcel Y were repeatedly rebuffed by SPU. The inability to obtain a WAC for Parcel Y threatened the viability of the project itself, as the City would not continue to process the short plat application or issue building permits in the absence of an approved WAC and the execution of accompanying system improvement contracts.

3.18 During the permit process, the City admitted to one of the apparent reasons for the City's intransigence in issuing a WAC for Parcel Y. Specifically, City staff revealed that, before Oom Living's purchase of the Subject Properties, a prior owner had submitted a short plat application to subdivide the Subject Properties into four lots. As part of that application, the prior owner had obtained a WAC that required the installation of a new water main extension along the entire length of 39th Avenue SW between SW Monroe Street and SW Elmgrove Street. In short, the prior application had created an expectation by the City that it would receive the dedication of a newly-constructed water main extension at the sole cost and expense of a private developer.

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3.19 However, the short plat application by the former owner of the Subject Properties was materially different from Oom Living's application. Specifically, the former application proposed four lots oriented from north to south, with one of the lots containing only frontage on 39th Avenue SW, and having no other frontage on SW Monroe Street and 39th Avenue SW, both of which contained existing water mains. In contrast, Oom Living's short plat application only sought the creation of three lots, with each lot having frontage on either SW Monroe Street or SW Elmgrove Street, both of which contained existing water mains.

3.20 Inasmuch as SPU's own policies require the issuance of a new WAC for any new development proposal, the previous WAC issued to the former owner should not have been applicable for Oom Living's project. Nonetheless, the City initially refused to issue a new WAC, and sought instead to impose the prior WAC and its accompanying requirement for a water main extension on Oom Living. After further discussions with SPU and the City Attorney's office, Oom Living applied for a new WAC for Parcel Y.

3.21 On or about April 6, 2023, the City issued a new WAC for Parcel Y. The WAC was expressly conditioned to require Oom Living to

> "[d]esign and install approximately 173 feet of 8-inch ductile iron pipe water main in 39th Ave SW, extending from SW Elmgrove St to the northern parcel boundary [of Parcel Y], including appurtenances"

The aforementioned WAC is attached hereto as **Exhibit 1** and is incorporated herein by reference. Once the required water main extension is constructed, the City requires that it be dedicated to the City.

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3.22 The WAC treated Oom Living's project as if it was the same as the one proposed by the former owner, even though Parcel Y had frontage on SW Elmgrove Street and direct access to its water main. The WAC failed to identify any deficiencies in existing water supply or any inadequacy with the existing water system infrastructure, including the water main in SW Elmgrove Street. Neither did the WAC identify any stresses on the existing water system that would be caused by Parcel Y's proposed residence and accompanying DADU. Oom Living estimates that the cost to construct the proposed water main extension is roughly $355,000—nearly one third of the overall construction budget for the future residence and DADU for Parcel Y.

3.23 Notably, the WAC also did not conclude that connecting Parcel Y to the water main under SW Elmgrove Street would somehow constitute a disfavored "spaghetti line," although the City's assertions in this regard would feature prominently in later appeals of the WAC.

3.24 Regardless, Oom Living has not proposed a "spaghetti line" for Parcel Y. The term "spaghetti line" refers to a private water line that winds circuitously through the public right of way before connecting to a distant, non-adjacent public water main. The diagram below accurately depicts several such spaghetti lines in the vicinity of the Subject Properties.

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3.25 Here, because Parcel Y has frontage on SW Elmgrove Street, its connection to the main in SW Elmgrove Street would enter Parcel Y directly and perpendicularly, without winding through public right of way. Moreover, even if Parcel Y's connection to the SW Elmgrove Street main were a "spaghetti line," nothing in SPU's rules or relevant City ordinances prohibits such lines here.

3.26 The existing water main under SW Elmgrove Street is a "suitable" water main as that term is used in SPU's rules and applicable Code. The water main within SW Elmgrove Street extends along the entirety of Parcel Y's frontage on SW Elmgrove Street, and otherwise satisfies SPU's standards for a new water connection.

3.27 The private connection from SW Elmgrove Street would be approximately 140 feet long. This is shorter than the length of the water main extension required by the

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City and substantially shorter than the maximum 300-foot private connections allowed under SPU rules.

3.28 Longer private water connections are no more prone to leaks or other maintenance problems per linear foot than shorter private connections and are subject to applicable plumbing codes and City inspections.

3.29 The demanded water main extension under 39th Avenue SW does not provide Parcel Y with any special benefits. To the contrary, a requirement to connect Lot Y to a new water main will be problematic for future owners because it will be a dead-end connection.

3.30 The City's demand for a dead-end main that terminates at the north boundary of Parcel Y, will result in a main that does not sufficiently turn over stagnant water creating a water quality and maintenance issues for the future residents of Parcel Y.

3.31 Proper maintenance of a dead-end main requires frequent flushing of the pipe to ensure there is no stagnant water build-up. Here, flushing would be costly and wasteful—requiring up to 10,000 gallons of water per flush. Connecting the water service to the existing main in SW Elmgrove Street would eliminate the need for flushing and would provide consistent and higher water quality.

3.32 Moreover, by definition, a dead-end main extension does not increase fire flow. Per the City's 2019 water system analysis, the current system exceeds fire flow thresholds required by the Seattle Fire Department.

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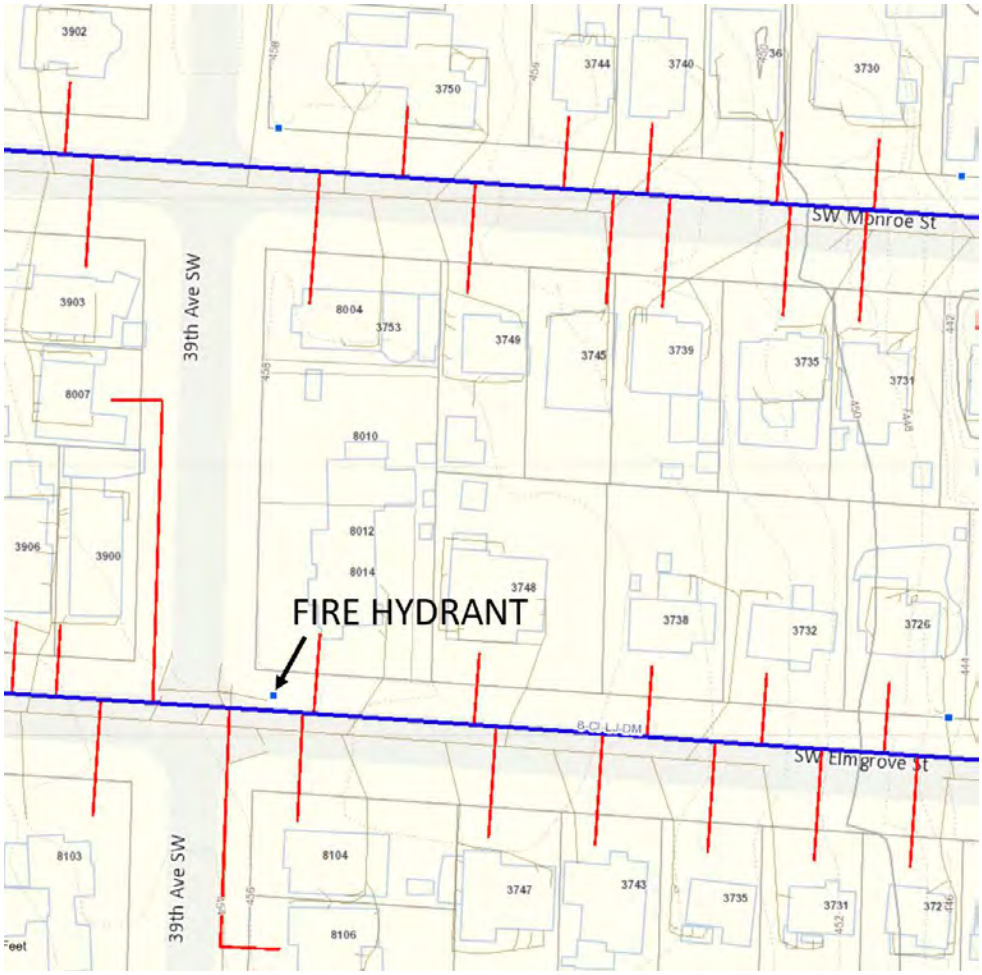

3.33 SDCI has never required any additional water requirements for Parcel Y's building permit concerning fire safety. In short, the existing hydrants and their established flow satisfy applicable requirements.

3.34 Taken together, the demanded water main extension provides only public benefits and is unrelated to any impacts that the proposed residence and accompanying DADU will have on the City's water system; it provides no private benefit to Parcel Y, but instead will add roughly $355,000 to its development costs and create water quality concerns for the future owners of Parcel Y.

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C. SPU Manager-Level Review

3.35 On or about April 17, 2023, Oom Living filed a timely request for manager-level review of the WAC issued for Parcel Y, including the condition requiring construction and dedication of a water main extension.

3.36 On or about April 20, 2023, the City held a hearing on Oom Living's appeal. Per applicable Code, the City was required to issue a decision on the appeal within two weeks of the hearing. Per public disclosure, immediately after the hearing, the City staff deliberated and voted to deny the appeal.

3.37 On or about May 18, 2023, almost a month after the hearing for manager-level review and their internal deliberations which upheld the issued WAC, and in excess of the requirement to issue a decision within two weeks, the City issued a written decision denying the appeal.

3.38 Comments made by City staff in their internal deliberations lay bare that the purpose of the main extension requirement in the WAC for Parcel Y is neither expressly authorized by City code nor intended to mitigate for project impacts. Instead, the demand is intended to promote the development of a water main grid system, which would allegedly benefit water quality in the system and increase the amount of predictability and uniformity for current and future homeowners and developers. This echoes the provisions of SPU's rules which state that the decision to require public main improvements for a new development or redevelopment are to be based upon SPU's determination whether the improvement provides a positive net benefit to the water system in the area. These are all quintessentially systemic, public—rather than private—benefits.

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D. SPU Director-Level Review

3.39 On or about June 16, 2023, Oom Living filed a timely request for director-level review of the WAC for Parcel Y, including the condition requiring construction and dedication of a water main extension. Portions of Oom Living's appeal materials for the director-level review are attached hereto as **Exhibit 2** and incorporated herein by reference.

3.40 On or about June 29, 2023, the City held a hearing on Oom Living's appeal for director-level review.

3.41 During that hearing, Plaintiff Jenna Walden made a presentation in which she demonstrated the arbitrary and capricious nature of WTR-440 and the City's interpretation and application thereof via the following diagram depicting alternative configurations for the three lots comprising the Subject Properties:

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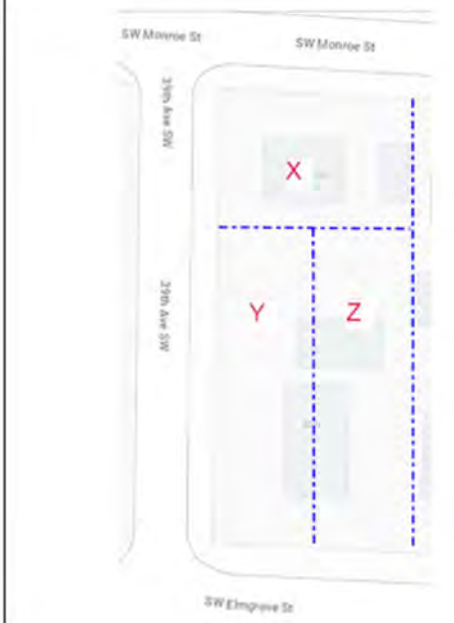
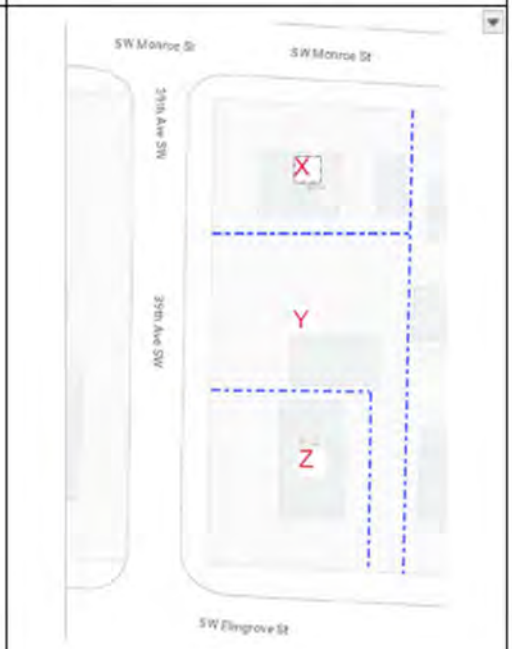
NO MAIN EXTENSION REQUIRED	OUR CURRENT PROPOSAL MAIN EXTENSION REQUIRED
	

Specifically, under the first configuration, which created two, long and narrow lots with frontage on SW Elmgrove Street, Jenna Walden asserted that, under WTR-440, the City apparently would not require a water main extension along 39th Avenue SW. However, under the second lot configuration, in which both lots still have frontage on 39th Avenue SW, the City was requiring a water main extension.

3.42 Per records received in response a Public Records Act request following the City's director-level review of the WAC, the meeting notes from June 29, 2023 from the City's internal deliberations confirm that City Staff agree with Jenna Walden's observation regarding the arbitrary and capricious nature of WTR-440. Specifically, per the meeting notes, DSO Director Jeff Bingman stated as follows:

> "If they [*i.e.*, Oom Living] had submitted that site plan they showed with just a straight north-south boundary (east and west parcels with frontage

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to SW Elmgrove St, no flag lot), they would not have to do a water main extension."

3.43 On or about June 16, 2023, the City's issued a decision denying Oom Living's appeal for director-level review. Concerningly, the same individuals that adjudicated the manager-level review are largely the same individuals that adjudicated the director-level review.

E. Damages and Proceeding "Under Protest"

3.44 After exhausting the City's administrative review process, including manager-level and director-level review, and without receiving any relief from the City's requirement to construct a water main extension, Oom Living's project was in peril. Specifically, the City would not continue to process Oom Living's short plat or building permits unless and until Oom Living first obtained a "Approved with Contract" WAC, which essentially means executing DSO's System Improvement Contract for the construction of the demanded water main extension. In short, Oom Living was being forced to either tolerate crippling and costly delays in the project while it sought to vindicate its rights, or to mitigate its damages by executing the DSO System Improvement Contract and proceeding with construction of the sewer main.

3.45 Oom Living was constrained to sign DSO's System Improvement Contract and did so expressly "under protest." On or about August 7, 2023, Oom Living received an "Approved with Contract" WAC. Thereafter, the short plat was approved and recorded and building permits were issued for the future residences.

3.46 To add insult to injury, DSO's standard Request for Utility System Improvement Contract states that the "The Property Owner must apply and pay for new

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water services through a separate application process." In other words, after expending potentially hundreds of thousands of dollars for the planning, design and construction of a water main extension, Oom Living will be required to pay additional connection charges to tap into the very water main extension they just constructed and paid for!

3.47 The City's unlawful demand and inefficient process ultimately caused an approximate six-month delay for commencement of Oom Living's project and required constructing during the wet season. In turn, this causes additional delays and pressure on the timing to complete construction and sell the new residences during the prime market months of April, May and June.

3.48 Even with a condensed construction schedule, Oom Living anticipates missing its target delivery months and instead anticipates delivering the custom homes in June, July and August of 2024. In turn, this may require price concessions in order to timely sell the new residences.

3.49 Ultimately, the City's demand for a water main extension for Parcel Y is contrary to SPU regulations, city code, state law, and the state and federal constitutions—including, but not limited to, (1) SPU Director's Rule WTR-440, (2) chapter 21.04 of the Seattle Municipal Code, (3) chapters 19.27, 35.92, and 82.02 RCW, and/or (4) the state and federal constitutions.

3.50 On or about August 3, 2023, Oom Living filed a Land Use Petition with this Court challenging the WAC issued for Parcel Y. On or about August 7, 2023, Oom Living filed an Amended Land Use Petition and Complaint.

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IV.
FIRST CAUSE OF ACTION
Declaratory Judgment (chapter 7.24 RCW)

4.1 Plaintiffs re-allege and incorporate by reference all allegations stated above as if fully set forth herein.

4.2 Plaintiffs seek a declaratory judgment of rights and obligations under the Washington Uniform Declaratory Judgment Act, RCW Chapter 7.24, and Washington Civil Rule 57.

4.3 Declaratory judgment is appropriate in this case because (1) there is an actual, present, and existing dispute, (2) between parties having genuine and opposing interests, (3) which involves interests that are direct and substantial, and (4) a judicial determination of which will be final and conclusive.

4.4 The Court should issue a declaratory judgment concluding that the City's demand concerning the water main extension violates provisions including, but not limited to, (1) SPU Director's Rule WTR-440, (2) chapter 21.04 of the Seattle Municipal Code, (3) chapters 19.27, 35.92, and 82.02 RCW, and/or (4) the state and federal constitutions.

4.5 The City's demand that Plaintiffs construct a new water main extension is contrary to controlling City code provisions, including SMC 21.04.050 which provides that, upon application and payment of the appropriate fee, the City "***shall*** cause the premises described in the application, if the same abut upon a street in which there is a City water main, to be connected with the City's water main by a service pipe extending at right angles from the main to the property line," with certain exceptions defined by ordinance.

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4.6 One of these exceptions is in SMC 21.04.061, which establishes when a water main extension may be required before a parcel connects to the system. It explicitly provides that an extension may only be required when a parcel does "not abut[] a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary." SMC 21.04.061(A). Under no other circumstances is a water main extension required by the texts of the code. Here, proposed Parcel Y has a boundary along SW Elmgrove Street, and SPU made no finding that the main under SW Elmgrove Street was neither standard nor suitable to serve the proposed residence.

4.7 SPU's decision also violates SPU Director's Rule WTR-440, which purports to "establish [SPU's] requirements to receive water service." Section VIII.A.3 of that rule sets out the conditions when a water main extension is ***not*** required:

> A water main extension is not required when one parcel:
>
> (a) Has a boundary with a standard or suitable water main along the full extent of that boundary; and;
>
> (b) One boundary contains a standard distribution or suitable water main along the full extent of the boundary; and
>
> (c) A single water service is required.

Plaintiffs' proposal meets all of these conditions: (a) Parcel Y has a boundary along SW Elmgrove Street, which contains a standard or suitable water main along the full extent of Parcel Y's boundary; (b) SW Elmgrove Street contains a standard distribution or suitable water main along the full extent of Parcel Y's boundary; and (c) Parcel Y is the only parcel in this project that requires new water service, as the other two parcels—Parcels X and Z—already have connections.

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4.8 Section VI.A.3 does not override the City code and WTR-440, § I. Section VIII.A.3. Instead, that section only applies where an owner divides property to avoid a water main extension requirements "***that would apply before*** the division, redivision, or lot boundary adjustment." WTR-440 VI.C.3.c. Prior to Oom Living's subdivision, there was no Parcel Y and thus no new parcel that could trigger any water main requirement, as the existing Parcels X and Z had existing water connections.

4.9 Insofar as the City claims that SPU's authority to demand a water main extension derives from RCW 35.92.010, its actions violate that statute as well

4.10 The City code does not expressly authorize SPU's authority to demand Plaintiffs to construct a water main extension. RCW 35.92.010, by its plain terms, only authorizes SPU to establish and charge uniform *rates* across classes of customers or service. And even if the statute could be construed to authorize a one-time charge for new infrastructure, the City failed to meet the statutory requirement that the charge be limited to the property owner's "equitable share of the cost of the system," plus the actual cost of connection. RCW 35.92.025.

4.11 SPU also violated RCW 82.02.020, which forbids the City from imposing "any tax, fee, or charge, either direct or indirect," unless the City can demonstrate that the exaction is "reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply." *Citizens' Alliance*, 145 Wn. App. at 656-57. The statute limits the City's authority to impose water "system charges" to "the proportionate share of such utility or system's capital costs" that the City "can demonstrate are attributable to the property being charged." RCW 82.02.020; *see also* RCW 82.02.050.

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4.12 Plaintiffs also seek declaratory judgment ruling that the water main condition violates the doctrine of unconstitutional conditions predicated on the Fifth and Fourteenth Amendments to the U.S. Constitution.

4.13 The federal doctrine of unconstitutional conditions forbids state and local government from demanding that an owner dedicates her property to a public use as a condition of a land use approval unless the government first shows that the demand satisfies the "essential nexus" and "rough proportionality" tests set out by *Nollan*, 483 U.S. 825 and *Dolan*, 512 U.S. 374, and as incorporated by RCW 82.02.020. *Citizens' All. for Prop. Rts. v. Sims*, 145 Wn. App. 649, 669-70, 187 P.3d 786 (2008).

4.14 The doctrine places the burden of demonstrating nexus and rough proportionality on the government, *Dolan*, 512 U.S. 374, and further requires that any nexus and proportionality studies be completed before the government demands a dedication of private property to a public use. *Church of Divine Earth v. City of Tacom*a, 194 Wn.2d 132 (2019).

4.15 A Water Availability Certificate is a discretionary approval in the land use permitting process. Because the government can use this process to force owners to choose between building a home or surrendering valuable property interests as a condition to issuance, the certificate is subject to the doctrine of unconstitutional conditions. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 619, 133 S. Ct. 2586, 186 L. Ed. 2d 697 (2013).

4.16 The City's demand that Oom Living fund the design and installation of a new water main extension and takes on liability on the City's property and on behalf of the City furthermore constitutes a dedication of property to public use and is subject to

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the doctrine. *Pioneer Square Hotel Co. v. City of Seattle through Seattle Pub. Utilities*, 13 Wn. App. 2d 19, 26, 461 P.3d 370 (2020) (If a water applicant builds a new main extension per SPU's demand on a conditioned water availability certificate, "that main would also be publicly owned.").

4.17 The City was advised of the doctrine's application to the conditioned water availability certificate but did not conduct the required nexus and proportionality studies before first making the water main demand.

4.18 Nor did the City offer any nexus and proportionality justifications in response to Oom Living's objections on administrative appeal.

4.19 The City's failure to do so was purposeful. Assistant City Attorney Andrew Eberle wrote to Jenna Walden on March 31, 2023 that, in his opinion, the "proportionality requirement does not apply to the City's water main extension requirements."

4.20 Regardless of constitutional and statutory state law requiring the City to establish nexus and proportionality, SPU disallows an applicant from demanding proof of an essential nexus between the permit condition and an identified public impact of the burdened development, and disallows an applicant from demanding proof of how the condition mitigates any identified impacts caused by the proposed development during the dispute process. SPU also disallows an applicant from demanding proof that the size and scope of the condition is proportionate to the project's impacts. Establishing essential nexus and rough proportionality is the burden of the government, yet SPU does not think it applies to them and therefore does not bother to prove nexus or proportionality.

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4.21 The City violated Plaintiffs' federal constitutional rights by demanding that they dedicate property to a public use as a condition precedent to receiving a water availability certificate without (1) conducting a nexus study determining whether Plaintiffs' proposal to hook up to the existing water main on SW Elmgrove Street would result in any measurable impacts to the public and without (2) reaching a proportionality determination that the cost of funding the water main extension is proportional to mitigate only for the impacts (if any) that would result from hooking up to the existing water main.

4.22 Plaintiffs have suffered an injury to their statutory and constitutional right to receive a decision on their water availability application free from the unconstitutional permit condition.

4.23 Plaintiffs are entitled to an order declaring that the water main extension condition violates the doctrine of unconstitutional conditions and further violates SPU rules, controlling City code provisions, and State statutes and is invalid.

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V.
SECOND CAUSE OF ACTION
Violation of Fifth and Fourteenth Amendments to the United States Constitution Doctrine of Unconstitutional Conditions (42 U.S.C. § 1983)

5.1 Plaintiffs re-allege and incorporate by reference all allegations stated above as if fully set forth herein.

5.2 Plaintiffs specifically incorporates Paragraphs 4.3 to 4.4 and 4.12 to 4.23 above concerning the federal doctrine of unconstitutional conditions. In addition to those allegations, Plaintiffs alleges as follows:

5.3 The federal Civil Rights Act of 1871, 42 U.S.C. § 1983, provides a remedy against persons who violate federal constitutional rights acting under color of state law pursuant to official policy or a widespread or longstanding practice or custom.

5.4 One or more Defendants imposed the unconstitutional water main extension condition on the Water Availability Certificate acting under color of state law pursuant to official policy or a widespread or longstanding practice or custom.

5.5 The City's decision to press its water main extension demand without responding to Oom Living's objections renders its unconstitutional actions knowing and purposeful. *See Church of Divine Earth*, 194 Wn.2d 132.

5.6 The City's unconstitutional actions deprived Plaintiffs of their basic right to make productive use of Parcel Y and unnecessarily delayed and driven up the cost of the project.

5.7 Plaintiffs' have been harmed by the City's knowing violation of their federal constitutional rights and are entitled to an award of damages.

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5.8 Plaintiffs have suffered damages, and will continue to suffer damages, as a result of the unconstitutional water main extension condition, in an amount to be proven at trial.

VI.
RESERVATION OF RIGHTS

6.1 Plaintiffs reserve the right to amend, modify, and/or supplement this complaint as the Court requests or as additional information comes to light, whether through public records requests, discovery, or other means.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. A declaratory judgment finding and concluding that the City's demand concerning the water main extension violates provisions including, but not limited to, (1) SPU Director's Rule WTR-440, (2) chapter 21.04 of the Seattle Municipal Code, (3) chapters 19.27, 35.92, and 82.02 RCW, and/or (4) the state and federal constitutions.

B. An award of damages for violation of Plaintiffs' federal civil rights in excess of $100,000, with the exact amount to be proven at trial.

C. An award of costs and attorney's fees as allowed by 42 U.S.C. §1988, or as otherwise allowed by statute, regulation, court rule, common law, or any other basis in law or equity.

D. Such other and further relief as the Court deems just, equitable, or otherwise proper.

Dated this 23rd day of April, 2024.

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PACIFIC LEGAL FOUNDATION

By: s/ *Brian T. Hodges*
Brian T. Hodges, WSBA # 31976
Attorney for Plaintiffs

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By: _____
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Attorney for Plaintiffs

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Exhibit 1

Seattle Public Utilities

Development Services Office
700 Fifth Ave, Suite 2748 I PO Box 34018
Seattle, WA 98124
(206) 684-3333
SPUWaterAvailability@seattle.gov

Water Availability Certificate SYSTEM IMPROVEMENTS REQUIRED

WAC Number:	SPUE-WAC-23-00381
Project Number(s):	005043-22PA
Project Address:	8010 39TH AVE SW
Development Site:	DV0335137
Requested For:	Building Permit
Certified By:	Halley Glover
Certified Date:	April 06, 2023
Expiration Date:	April 06, 2026

Water availability for project number 005043-22PA is not approved at this time.

An Approved Water Availability Certificate will be issued when a contract has been signed and related charges have been paid for the system improvements as follows:

System Improvement Requirements: Design and install approximately 173 feet of 8-inch ductile iron pipe water main in 39th Ave SW, extending from SW Elmgrove St to the northern parcel boundary, including appurtenances.

To begin the contract process, submit a Request for Utility System Improvement Contract. For more information, contact the Development Services Office at SPU_DSO@seattle.gov or 206-684-3333.

New meter location is available off the water main(s) in: 39th Ave SW and SW Elmgrove St, after installation of system improvements.

- If the proposed project changes after this Water Availability Certificate is certified, or if the current plan submitted to SPU does not detail the entire scope of the proposed project, water requirements may change, and a new Water Availability Certificate may be required.
- Fire flow or other Fire Department requirements may alter water system needs at any time.
- Water availability requirements will change if existing system cannot support desired water service.

Parcel ID: 2695600430

Project Description: Construct a new SFR and DADU on proposed Parcel Y of short plat 3040144-LU.

Existing Water Service(s):

Size:	Type:	Material:	Status:
0.75 inch(es)	DOM	Copper Main to Meter/Copper Meter to Union	ACT

Existing Water Main(s):

Water Main Location: SW Elmgrove St

Size:	8 inch(es)	Material:	Cast Iron	Elevation:	457 feet	Installation Year:	1928
Class:	B	Pressure Zone:	WS585	Static Pressure:	56 PSI	Right-of-Way Width:	60 feet

If fire flow information is needed, please contact the Development Services Office at SPU_DSO@seattle.gov or 206-684-3333.

Recommended design pressure is 20 psi less than static pressure. Refer to Washington Administrative Code 246-290-230.

The water system is in conformance with a County approved water comprehensive plan, and has water right claims sufficient to provide service.

One domestic water meter will serve the domestic water needs of a single legal parcel. Separate meters are required for each legal parcel. This may necessitate the installation of water utility improvements by the property owner.

Seattle Municipal Code (SMC) outlines water rates and regulations in SMC Chapter 21.04. The State of Washington defines basic regulatory requirements to protect the health of consumers using public drinking water in WAC Chapter 246-290.

This water system improvement is eligible to enter into a Latecomer Agreement. The deadline to apply for a Latecomer Agreement is PRIOR to approval of infrastructure design or Water System Improvement Contract execution. The Latecomer Agreement allows a property owner who has installed water system improvements to recover a portion of the costs of those improvements from other property owners who connect to the improvements. For more information, visit Latecomer Agreements or contact the Development Services Office at SPUWaterAvailability@seattle.gov or 206-684-3333.

Exhibit 2

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June 16, 2023

Andrew Lee
General Manager / CEO - Seattle Public Utilities
City of Seattle
700 5th Avenue, Suite 4900
Seattle, WA, 98104

Dear Mr. Lee;

For the last 100+ days, my short plat permit #3040144-LU (and associated building permits) at 8010-14 39th Ave SW has been at a standstill while SPU managers have continued to defend their arbitrary and capricious decision to issue a Water Availability Certificate ("WAC") requiring a 173 linear feet ("LF") dead-end water main extension in 39th Ave SW, even though the proposed Parcel Y can connect through an abutting, shared boundary on Elmgrove Street (with a suitable main) and despite this requirement being complete overkill for the impact of my development.

In this letter and the accompanying reply to the manager-level denial of our request for review, I (1) request Director review of the manger-level decision on my WAC appeal and (2) share with you why I believe my small, simple project and the disproportionate requirements SPU tied to my building/short plat permits are exceptional and why it is in the best interests of SPU to waive these system improvement mandates. I also believe that it is a detriment to the public that the Manager Review Committee does not have someone with a legal background to address the matter of interpreting code correctly.

REQUEST: ***Invoke DR WTR-440 Section II: Discretion.*** *In limited or exceptional circumstances, and when it is in the best interests of the utility, SPU's General Manager/CEO or authorized designee, may modify or waive the water main requirements or water system improvements under this rule. Approve a request for a revised "approved" WAC to be issued for short plat permit no. 3040144-LU for one new connection to the water main in Elmgrove Street with a 1-inch meter and line. I also request that a new "Approved" WAC be issued as soon as possible (not 5-10 business days per normal turnaround). Time is of the essence as subcontractors are starting to drop us from their summer schedule. Any coordination with SDCI on expediting finalization of permits would be much appreciated.*

PROPOSED DEVELOPMENT IMPACT: *An application to increase housing density in a single-family neighborhood by subdividing an existing 1-lot parcel into 2-lots at 8014 39th Ave SW. The development impact to the neighborhood is* ***the addition of one single-family house with a DADU****. The existing home will be rebuilt to modern housing codes and will re-use its existing water connections.*

PROPOSED CONNECTION: *Install one 1" water meter connection with the suitable water main within SW Elmgrove Street via the proposed shared and abutting boundary for Parcel Y. The 1" private water line within the parcel boundary will be approximately 140 LF long; this is shorter than the water main extension SPU is mandating in the issued SPUE-WAC-23-00381.*

WAC REQUIREMENT: *Install 173 LF 8" dead-end water main extension off of Elmgrove St in 39th Avenue SW.*

EXCEPTIONAL CONDITIONS:

1. My project is in a sleepy West Seattle single-family neighborhood. I have requested one new 1" meter connection to a main in SW Elmgrove Street for the additional new house and am able to make this connection via Parcel Y's abutting shared boundary. A large, existing corner lot is proposed to be divided in two and the proposed configuration meets Seattle Municipal Code 23.22.100(C) - Design & Construction Standards, Lots and was approved by SDCI's Land Use review. The existing home can reuse its water connection; the dispute is over the water connection for the new Parcel Y; a flag lot configuration with a minimum 10' boundary sharing Elmgrove Street. SPU is applying an arbitrary and capricious section from WTR-440 to my project, claiming that this lot design has "the effect" of avoiding a main extension and therefore, WILL REQUIRE A MAIN EXTENSION regardless of my project, let alone anyone else on the block, needing it. The issued WAC demand for a 173 LF 8" water main extension in 39th Ave for this water connection is overwhelmingly unnecessary, is not appropriate for the project need and cost prohibitive; upwards of $350,000 after factoring in design, permits, inspections, testing, construction and all the additional appurtenances and valves to maintain a dead-end water main.

2. I relied on prior communication with SPU and SDCI which led to planning a six-sided parcel. Early on in the short-plat process, SPU and SDCI staff guided me to create the six-sided parcel in the first place by discouraging a side-sewer easement across Parcel Z. They then approved Parcel Y to connect its side sewer to the City's sewer main in Elmgrove through the abutting boundary. Later, SPU issued an unapproved WAC claiming that I avoided a main extension with my proposed short-plat design and therefore, one will be required *even though it is not needed and there is a reasonable alternative*.

3. SPU is not requiring a sewer main extension in 39th and allowing my project to connect to the sewer main in Elmgrove. Why would the same agency allow me to connect to a sewer main in Elmgrove but require a water main extension in 39th Ave SW? SPU managers have never explained the need to me. Think about the impact on this neighborhood opening up the street twice; one will disrupt it for weeks. I will have to shut down the entire block and intersection, likely in winter, demo the intersection of Elmgrove and 39th Ave SW's pavement, excavate, haul in and out material, install a water main line and connect to the main to service *one* single-family house. How is this reasonable and consistent? When citizens rail against the irrationality of government, these kinds of examples are what earn that criticism.

4. Six-sided lots are not illegal nor does SPU or SDCI disallow them. SPU managers fail to communicate or be supported by code for their opposition to a flag lot parcel (their opposition is inferred through written communication by SPU managers; it is not stated in code or rules). Is there a public danger? Does it defeat best practices that SPU advocates? What is the intent behind VI.C.3.c? What is the code violation or problem that it addresses? I suspect the reason is a bit more

self-serving: they just want the main for future gridding purposes and they want it paid for by me. This is not a viable or legal reason to require it.

5. My project does not propose a "spaghetti line" despite SPU staff making this assertion repeatedly. The proposed connection is the lowest-maintenance, easiest-to-repair, safest, most direct and at 140 LF, the shortest option for both end-user and SPU. SPU managers have shown a disregard to the assumptions I have presented over and over which I believe has led them to make poor conclusions. I have stated in written emails to SPU Managers multiple times, as well as in my verbal presentation at the Manager Determination Review on 4/20, that I am NOT proposing a "spaghetti line" to connect new Parcel Y to a main. And yet SPU's "Denial" letter issued on 5/18 said,

3. Long, private water lines are often referred to as "spaghetti lines" regardless of whether they change direction. Leaks and other maintenance problems negatively affect the overall water infrastructure and can cause expensive maintenance difficulties to SPU's ratepayers who own these long private water lines. SPU policies are intended to create the shortest perpendicular water line and connection to a property, which benefits the future property owners and decreases the costs of future maintenance.

Either SPU managers are willfully ignoring me, or deliberately misleading. Not only is "spaghetti line" not defined by Seattle Municipal Code ("SMC") or WTR-440, but if it is a scenario inherently prevented by requiring an abutting boundary sharing a street with a suitable main, then a "spaghetti line" DOES NOT APPLY to my project. I have been telling them this since March to no avail.

In an email dated 4/3 to the City Attorney's office , with SPU managers cc'd I explicitly corrected their attempts to characterize my proposal as a "spaghetti line". In addition, my application for a revised WAC (Exhibit I) had an addendum attached establishing the correct assumptions for my project to be used, including a statement that I am not proposing a "spaghetti line". SPU kicked back a denial characterizing it as a "spaghetti line" without any explanation how my project has one.


Jenna

Mr. Eberle,

Thank you for sending me that Superior Court ruling to review. To be clear, I have never proposed a spaghetti line in the City ROW. When the beginning the new parcel Y had had direct access to a water main via a shared boundary with Kingrove Street and there would be no safety, efficiency, maintenance or quality issues involved. I have attached the site plan with the existing and proposed water meter locations.

In their denial reasoning (see attached Manager Determination Review response–Exhibit G), the gaslighting by SPU managers is bizarre; they argue that a long, dead-end 8" water main under a paved public street connected to one house meter is a preferred solution because it is less expensive to maintain and repair than a 1" pex line on private property buried 24" in the soil. This is simply untrue. Dead-end mains have known maintenance concerns; this is not an industry secret. These are some of the maintenance issues that will come with a dead-end main line and become the responsibility of SPU, *especially* with only one small meter drawing off of it:

1. **Ongoing water quality monitoring:** regular water testing will be required to ensure compliance with regulatory standards and safeguard public health.

2. **Regular flushing:** at a minimum of 2x/year, flushing will be needed to remove sediments, rust and other debris that may accumulate over time. It is also needed to get rid of stagnant water.
3. **Pressure monitoring:** monitoring devices at strategic locations along the new main will be needed to check and record pressure readings to identify abnormal fluctuations.
4. **Valve operation:** proper operating and maintenance of valves are necessary for system reliability and emergency response. Routine checks will be needed.
5. **Corrosion control:** dead end water mains are particularly susceptible to corrosion due to stagnant water. SPU will need to implement corrosion control measures to extend the lifespan of the pipe and maintain water quality.
6. **Documentation and record-keeping:** SPU will need to maintain records of maintenance activities, inspections, repairs and handle complaints of water quality by the owner of Parcel Y's house.

My proposal to connect in Elmgrove Street will require none of this maintenance and monitoring and yet SPU managers take the position that it is less superior than their mandate. For them to deny my request by deliberately misstating my proposed connection and its risks are very concerning.

It is also notable that in SPU's Strategic Business Plan '21-'26, reducing a backlog of minor maintenance work orders for hydrants and valves is a targeted commitment. Why would SPU managers create another on-going maintenance commitment for their team, especially when it is unnecessary?

6. The previous property owner submitted a preliminary short-plat design and SPU is using that against my project. Why? I am a different owner, with a different project design with a different project number. Why would a previous property owner's proposal continue to impact the decisions SPU makes on my project? The previous owner apparently submitted a preliminary short-plat design dividing the existing 2-lots into 4-lots which created a parcel without frontage on Elmgrove or Monroe street (both with suitable mains). Therefore, SPU issued an "Unapproved" WAC under that property ownership and required a main extension to service the parcels off of 39th Avenue SW. I was unaware of this preliminary effort and the WAC requirement when I acquired the property. That was not my design or my proposal; in fact, they are quite different from each other: I proposed 3 lots configured differently and they proposed 4 lots. Regardless, **it shouldn't matter what another property owner had proposed and SPU managers should not be comparing my project to their project in any way or exact the same conditions tied to the permits I applied for when it doesn't match the need. In addition, SPU managers are using the previous proposed short plat by a different owner and the WAC issued for it as THE REASON why my project "has the effect" of avoiding a previously-issued mandate for a main extension.**

I requested a review of the previously issued "unapproved" WAC twice on 3/6 and 3/7 to SPU managers as the language on the WAC says,

> "*If the proposed project changes after this Water Availability Certificate is certified, or if the current plan submitted to SPU does not detail the entire scope of the proposed*

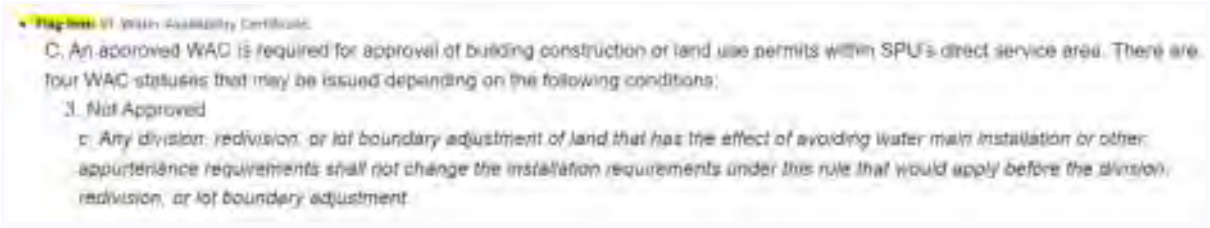
project, water requirements may change, and a new Water Availability Certificate may be required."

Despite my requests, I received this response from Jeff Bingaman on March 8 (Exhibit F):

"*The site plans submitted for all subsequent WAC requests were similar enough to the original request requiring a water main extension that new WACs were not generated. This is our standard procedure to eliminate the redundant production of duplicate WACs and each of those submissions was closed to the original Not-Approved WAC.*"

I could only surmise that SPU was not going to lift a finger to re-review my proposed short plat based on its own design merits because of "standard procedure" and stick me with a half-million dollar water main extension. Wow, the indifference to me and my project is stunning with this statement. His responses showed SPU just doesn't care.

Mr. Bingaman goes on to claim more reasons why a new WAC won't be issued. Notably, he copies and pastes the section of WTR-440 VI.C.3.c that is being applied to my project (since SPU told the last property owner they had to extend the main, my project now avoids this mandate and will be held to account!) and ADDS THE WORDS "Flag lots" in front of the section (yellow highlighter). WTR-440 VI.C.3.c doesn't say "flag lots", but he indicates that this section is specifically for flag lots in mind without offering up any evidence that is the case or why flag lots are disallowed to provide water line connections to a main.



C. An approved WAC is required for approval of building construction or land use permits within SPU's direct service area. There are four WAC statuses that may be issued depending on the following conditions:

3. Not Approved

c. Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment.

He then says,

"*What the above text on flag lots means is that your division of Parcel B to include a 10' section abutting SW Elmgrove St does not reduce or eliminate the requirement to install an abutting watermain extension across the full parcel in 39th Ave SW.*"

He refers to VI.C.3.c as the "flag lot" section! Wow! He further states that SPU will not recognize the abutting boundary on Elmgrove as reducing "the need" for a fully-looped main extension; "a need" identified as a requirement for another person's project, not mine.

Further in the email, he gives another reason why my project requires a fully-looped main extension 270 lf long.

> *"This project does not meet the following provisions:*
> *2. Parcel C is not the last developable lot as Parcels A and B are being developed on this block.*
> *4. There is a potential for gridding.*
>
> *The statement that parcel C is the last developable lot is not accurate based upon SPU policy."*

He then attaches the previous property owner's short plat design with *four* proposed lots to establish that I have not requested as many lots as I could have, therefore it's not the developable lot, therefore that exemption does not apply. Again, what??? I own this property and I am not proposing four lots, but I am creating more units with three parcels, so how can Mr. Bingaman judge my project's layout against what another owner did to exclude the exemption being applied? When did parcel count become valued over density?

Strangely, Mr. Bingaman goes on to cite SMC 21.04.06 - Water mains required before connections, strange because it supports my project's right to connect to the existing main which says,

> *"In case of application to supply water service to a parcel not abutting a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary, the Director will require construction of a standard distribution water main abutting the property before a connection is made, unless otherwise approved by the Director. The standard distribution water main shall be constructed in the abutting street to the extent of the parcel boundary, as required by the utility for the orderly extension or efficient gridding of the public water system."*

But Parcel Y DOES abut a street with a suitable main. I am trying to understand this rationale: a previous owner's design, something different than my proposal, is continuing to impact my project's requirements. Why are SPU managers not reviewing my project based on its individual merits, design, needs and impacts?

7. SPU has not articulated the engineering or lawful public need for a water main extension because of my project. SPU does not claim or offer any evidence that the Elmgrove water main cannot service my 1" meter request or show in hydraulic calculations that my proposal is infeasible, nor does it state the public OR engineering need for a water main extension. It only denies a 1" water main connection at Elmgrove Street *because* of the way Parcel Y is drawn (flag lot). I have challenged SPU managers to produce the code supporting this rule and they have either willfully ignored this request or do not have the support; they only cite their authority to make rules. SMC 21.04.061 is NOT a long code section. How does SPU extrapolate all their rules from that small section of code, let alone WTR-440 VI.C.3.c? Without clear evidence showing that Seattle code and RCW's support this rule, this denial appears arbitrary and capricious.

In fact, there is even verbage drift between RCW's authority to issue WAC's and SPU's statement of authority. SPU administrative documents include Water Availability Certificates, Directors Rules, Client Assistance Memos and TIP sheets. The information therein is once removed from the actual verbiage of the codes, both Seattle code and Washington State code.

Per the Revised Code of Washington Section 19.27.097 the purpose of the Water Availability Certificate is to confirm **"evidence of adequate water supply"** for new building permit applications. However, the SPU Water Availability Certificate includes different verbiage and incorrectly states the objective is **"to confirm water infrastructure exists".** This verbiage drift creates a situation where the WAC includes project crushing capital infrastructure upgrades as a condition of connection to the public water system.

Indeed SMC 21.04.050 - Connection—City responsibility. says,

> *Upon the presentation at the office of the Director of Finance and Administrative Services' receipt for the installation fees and the execution of the contract provided for in Section 21.04.030, the Director shall cause the premises described in the application, if the same abut upon a street in which there is a City water main, to be connected with the City's water main by a service pipe extending at right angles from the main to the property line, except as provided in Sections 21.04.060, 21.04.061, 21.04.062, 21.04.070, and 21.04.080. The City connection, which shall include a union placed at the end of pipe, and a stopcock placed within the curbline, shall be maintained by and kept within the exclusive control of the City.*

8. What is the gap between what SPU's system can provide and what my private development needs? SPU's 2019 Water Plan System 5.4.4.2 Redevelopment says;

> *"SPU reviews and provides a water availability certificate for each development as part of the local government's building permitting process (see appendices for SPU's policies and procedures for new services). If there is a gap between what the existing system can provide and what the private development needs, the developer will be required to upgrade the existing system to meet requirements."*

Parcel Y abuts a street with a suitable main. It should be allowed to connect a water line there.The simplest solution, a 1" water meter, will provide the need and fill the gap. However, SPU managers are denying this simple solution.

9. WTR-440 VI.C.3.c.'s discretionary authority is so broad and arbitrary, that SPU managers literally do not believe intent is a factor in "having the effect of avoiding a main". In the manager's response to our point 4(b), they assert:

> "*WTR-440, Section VI.C.3.c applies to this project as this is a division of land that has the effect of avoiding water main installation, regardless of the intent.*"

This is a truly stunning assertion, “regardless of intent”. This creates broad discretionary powers to address something they think people are getting away with despite not identifying the problem. In addition, when analyzing “has the effect of”, since it is not defined, “intent” should absolutely be a relevant factor. When they dismiss intent, they dismiss their duty to look at this relevant factor. Instead, it is dismissed whole cloth in an arbitrary and capricious fashion.

10. SPU claims they have never exceeded or contradicted the requirements of city code. And yet in March, I poked a significant hole in WTR-440 VIII.A.1 rule that resulted in the City Attorney’s office returning with legal analysis (Exhibit E) that SPU could NOT require a fully-looped main based on SMC (but was a recently expanded rule in WTR-440). SPU had to reissue a revised WAC reducing the mandate from 270 LF to 173 LF for this project **because they had exceeded the requirements city code allowed.**

Despite this recent history with me and my challenge to the previously issued WAC (Exhibit J), the same SPU managers responded with a factually incorrect position claiming in point 5.

> “*SPU has not implemented any requirements that exceed or contradict the requirements of city code, state law, or the federal or state constitutions. Nor does the application of SPU’s requirements to this project exceed or contradict the requirements of city code, state law, or the federal or state constitutions.*”

Yet they were caught red-handed exceeding their authority with WTR-440 and their mandate with the same property owner just two months prior. I hope one can understand why I do not trust the same people to review my case appropriately after being blatantly lied to.

In fact, I was pretty surprised that WTR-440 VIII.A.1 remains untouched by SPU during the current public comment period. The draft I saw is not crafted to harmonize the Seattle City Attorney’s legal analysis of VIII.A.1. to Seattle code. Division Director’s at SPU are aware of this analysis and should have redlined WTR-440 accordingly so that SPU cannot continue to violate code.

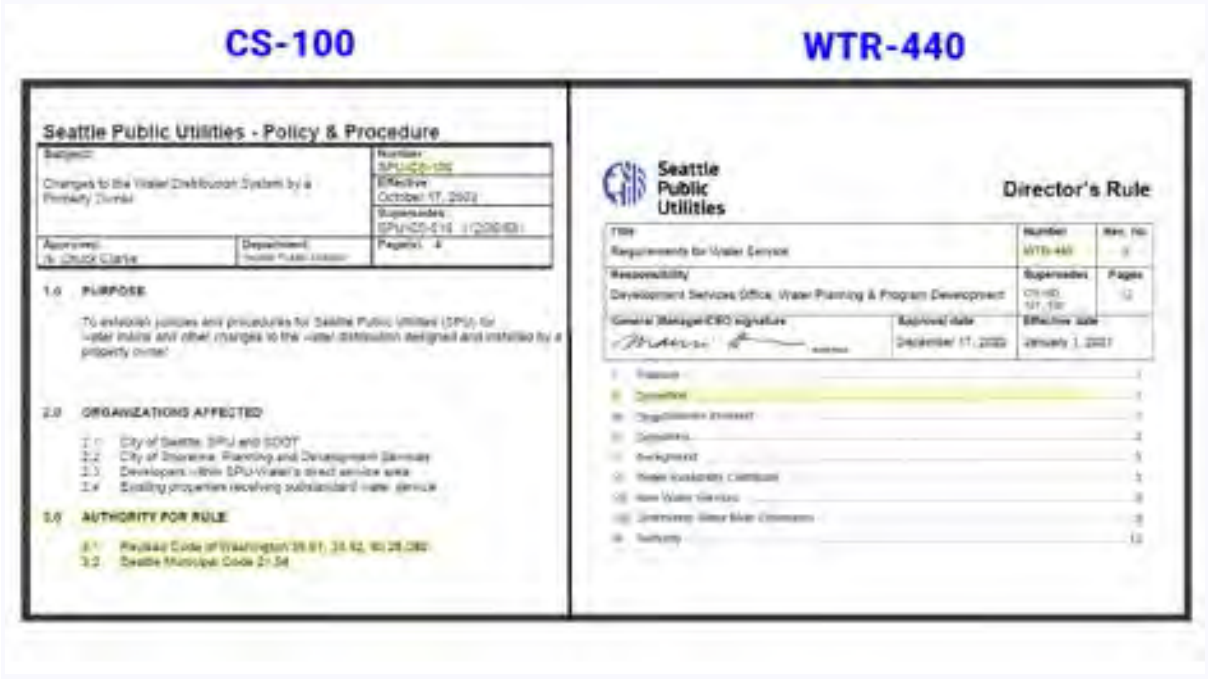
It is in this recent example and fact that SPU has exceeded allowable, legal requirements with me, that I believe that this is happening again to my project. SPU is exceeding the requirements of SMC and RCW with this mandate. It has happened before and it is happening now.

11. SPU’s utility main extension policies written in WTR-440 are on the chopping block. I was in the recent Stakeholders SPU Development Charge meeting held on 5/25/23. WTR-440 is up for public comment at this time. What that signals to me is that Mayor Harrell knows SPU policies have been housing-project killers and will continue to stand in the way of creating more housing should it not change. Astonishingly, SPU's Strategic Business Plan ‘21-’26 has no strategy to support more housing; it is acting without any strategic aims to support City Council and Mayoral housing creation objectives despite years of them declaring a “housing crisis” in Seattle.

Regarding WTR-440, I recently went down a rabbit hole comparing the previous versions of WTR-440, which are CS-100, 101 and 102 (these rules were in place for over 9 years). The first thing I noticed is

the differences on the first page. What is striking is that while the previous pre-2020 versions stay pretty true to Seattle Code and RCWs (and my project would have had an approved WAC under these Director Rules), WTR-440 takes a sharp turn, abandoning harmonizing the code with rule language and providing more discretion to SPU management. What happened in late 2019/early 2020 to make this happen, I'm unsure, but it does coincidentally, get issued a year after CB-119544 (DADU/ADU legislation) is passed unanimously.

For starters, WTR-440 already eliminates features of transparency. If you look at the side-by-side comparison of WTR-440 header to CS-100 header (below). CS-100 lists the Seattle Code and RCW that authorize the rules ("3. Authority for Rule"). In WTR-440, those authority references disappear completely and a new section, "Discretion" shows up. When government moves *away* from transparency that is a red flag.



The section which is being applied to my project thus resulting in an “UNAPPROVED” WAC with a main extension requirement, was changed in 2020 not just in language, but in placement of assessment. In CS-101.5.P. Requirements for New Water Service, the very last item in this checklist says,

> *“Lot boundary adjustments which have the effect of avoiding water main installation requirements under this policy shall not be considered by SPU when such determination is made.”*

WTR-440 not only adds to what just said lot boundary adjustments before, *“Any division, redivision, or lot boundary adjustment…”* to CS-101.5.P. , but it moved this from being on a checklist for conditions to see if a project *needs* a water main extension, **to being an automatic disqualifier for obtaining an “Approved” WAC.**

WAC "Not Approved" per CS-101.4.C.

C. Requirements for water service will be determined prior to issuing the WAC. An approved WAC is required for approval of building and land use permits.
1) If an existing water service will be retained with no change, OR if the proposed project does not require water service, OR if water service is available at the project site with no changes to the existing distribution system, the WAC will be approved.
2) If changes to the distribution system are required to provide water to the project, the WAC will not be approved, and the required changes to the distribution system will be described on the WAC.
3) An Approved with Contract WAC will be issued when the property-owner/developer signs SPU's Property Owner Contract to Change SPU's Distribution System and pays the required fees.
4) If the proposed project changes, the WAC will be re-evaluated. Changes to the project may result in increased requirements for water service.

These changes to SPU's Director's Rules are regressive, not progressive. CS-101 properly directed the user to use Section 5 - Requirements for New Water Service as further assessment of needing an extension. Items A-P provide 16 conditions of assessment before it's clear your project will need an extension or not. WTR-440 slams the door shut automatically and skips assessment with an arbitrary reason by moving CS-101.5.P up to the definition of an "Not Approved" WAC. By creating confusion and arbitrary decisions, relying on discretion rather than providing clarification (the purpose of rules), SPU is causing havoc within the housing pipeline. My project would have received an "Approved" WAC prior to the issuance of WTR-440 because CS-101 is clear and harmonized with Seattle code (except for 5.P. which is still overreaching). WTR-440 has muddied the waters and applied the most arbitrary and capricious section to my project causing almost FOUR MONTHS of delay and costing me tens of thousands of dollars in interest carry and consulting costs. No wonder developers are heading to other municipalities to build.

Here is WTR-440's new "Not Approved" WAC language. The arbitrary and capricious language has been expanded and added to determining a WAC status rather than determining whether or not the project needs a main extension for the project.

3. Not Approved
a. A water main extension or other water system improvement is required. In order to receive an Approved WAC, an Approved with Contract WAC will be issued when the applicant signs a contract provided by SPU to make the water main extension or other required system improvement; or
b. SPU may require water system improvements other than a water main extension Director's Rule WTR-440 Page 6 of 12 Requirements for Water Service Effective: January 1, 2021 in order to serve the parcel. These improvements may include but are not limited to new fire hydrants and valves. If changes to the distribution system are required to provide water to the parcel, SPU shall describe the required changes to allow new service connections.

c. Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment.

Mayor Harrell was Council President when CB-119544 (DADU/ADU legislation) was passed. SPU must and should support the Mayor and City Council's mission to get more housing built. WTR-440 are director's rules that give SPU way too much discretion and undermine the intent of RCW and code.

12. My case has been delayed, rife with obfuscation, non-transparent in policy positions and legislative history/intent, provided with confusing rationale and forcing me to spend money on changes that are unnecessary. The woeful treatment of my case, the long turnaround times, and the dismissive, deliberately misleading and condescending responses by SPU managers *leads me to believe that as a woman-minority owned business, I'm not receiving equal consideration for my project.* As a result, my project is amassing additional costs such as legal and consulting expenses and additional interest-carry, subcontractors are removing us from their schedule and my project is greatly delayed. This environment is already so tough; builders are sitting on the sidelines and interest rates are 500+ basis points higher than a year ago. It is even more expensive to build, currently, and SPU is making it extremely worse, to the point of discouragement. Examples include:

- Ignoring and refusing my two requests for a revised WAC.
- City Attorney office issuing legal analysis of SMC 21.04.061 which concluded that SPU cannot demand a fully-looped water main extension. Despite the language from city attorney, Jeff Bingaman and city attorney both panicked when I thus requested a revised WAC to be issued based on those findings and I was told, "*You have misread my letter*". Yet two days later, I was asked to apply for a new WAC which resulted in a revision from 270 LF to 173 LF main extension requirement.
- The City Attorney claimed in his letter that "Parcel Y does not abut a street with a standard or suitable City distribution water main." This is untrue.
- Mr. Bingaman, the City Attorney and the Manager Determination denial all refer to my proposal connection as a "spaghetti line" despite my repeated corrective efforts.
- A question about SMC's position on water main extension requirements that was tied to my request for a WAC review took two weeks for the City Attorney's office to respond.
- After the Manager Determination Review presentation, **SPU managers took an *unreasonable* amount of time to review and turnaround a denial**. My review date was on 4/20/23 and I did not receive a response until 5/18,23, **almost a month later**. ENG-430 says, "SPU communicates in writing to the applicant *within two weeks* of the committee meeting, or as soon as possible thereafter." SPU Managers took **FOUR WEEKS** to respond to me.

In the end the denial letter cited no new arguments or information that wasn't already in the possession of SPU; in fact they just sowed more confusion as our accompanying reply to the denial letter lays out. This has eaten up months of valuable time on my project. And when I do receive responses, <u>they use the same assumptions that they have been told multiple times are incorrect</u>.

According to Mayor Harrell's office, Seattle is on track to create only 3,500 new housing units this year. That is substantially below-average. Per a report by Challenge Seattle and Boston Consulting Group, Seattle needs to build an average of 60-80,000 housing units per year to keep up with its growth. The report found that the city is currently short by 120,000 housing units, with the gap growing every year. Seattle is woefully behind as evidenced by the number of new units rolling out.

- 2019: 3,704 new housing units added
- 2020: 3,320 new housing units added
- 2021: 4,388 new housing units added
- 2022: 7,237 new housing units added

Due to how expensive it is to build now, I am one of the few developers making efforts to create housing despite the headwinds. Then SPU comes in and mandates a disproportionate, absurd utility requirement to the tune of six figures without any supporting evidence establishing the need. It's enough to throw in the towel, quite frankly. I'm personally disgusted with the situation.

I hope you can find that my small project's impact on the water system of Seattle, juxtapose to the disproportionate mandate by SPU water availability department, is exceptional enough to waive the arbitrary requirement. The State of Washington is drafting legislation right now to signal that they want more housing. My development is trying to fulfill these objectives by increasing existing density. **I have proposed a mission-oriented, low-impact housing project, a project that does not need a water main extension**. SPU's demands are deeply troubling and include highly impacting a neighborhood unnecessarily, not establishing the need my project is creating, and in result are driving small developers to serve other communities rather than deal with SPU's irrationality and unpredictability.

Thank you for your consideration. I very much appreciate a more deft review of my project and request.

Sincerely,

Jenna Egusa Walden

Cc Marco Lowe
Liz Van Bemmel

This is a request under Director's Rule WTR-430 for Director Level Review of the decision of the Manager Level Review Committee dated May 18, 2023, under SPU file number SPUE-WACMD-23-00005-001 ("Manager's Decision"). Our planned development would subdivide two lots on the east side of 39th Avenue SW—between SW Monroe on the north and SW Elmgrove on the south—into three. *See* Exhibit A (site plan). All three lots will have frontage on both 39th Avenue (which does not contain a water main) and one of the two other streets (both of which do). Our proposed Parcel Y—located in between Parcel X to the north and Parcel Z to the south—has just over ten feet of frontage on Elmgrove via a flag-lot configuration, and we propose taking water service via the flag stick by tapping into the main on Elmgrove, just as we're allowed to do with Parcel Y's side sewer.

Our water availability certificate, however, sets forth system improvement requirements demanding that we "design and install approximately 173 feet of 8-inch ductile iron pipe water main in 39th Avenue SW, extending from SW Elmgrove Street to the northern parcel boundary, including appurtenances," and connect Parcel Y to this new main. *See* SPUE-WAC-23-00381. This demand is improper and illegal in several respects. Below we respond to the reasons given in the Manager's Decision for denying our appeal.

1. Our project complies with the requirements of Director's Rule WTR-440, section VIII.A.3.

Director's Rule WTR-440 purports to "establish[] Seattle Public Utilities' (SPU) requirements to receive water service." WTR-440, § I. Requirements concerning water main extensions, in turn, are set forth in section VIII of that rule. Section VIII.A.3 describes when a water main extension is ***not*** required, stating:

> A water main extension is not required when one parcel:
>
> (a) Has a boundary with a standard or suitable water main along the full extent of that boundary; and;
> (b) One boundary contains a standard distribution or suitable water main along the full extent of the boundary; and
> (c) A single water service is required.

Our proposal meets all of these conditions: (a) Parcel Y has a boundary along SW Elmgrove Street, which contains a standard or suitable water main along the full extent of Parcel Y's boundary; (b) SW Elmgrove Street contains a standard distribution or suitable water main along the full extent of Parcel Y's boundary; and (c) Parcel Y is the only parcel in this project that requires new water service, as the other two parcels—Parcels X and Z—already have connections.

In response to this, the Manager's Decision asserts that section VIII.A.3 only "applies to existing parcels, not proposed parcels," and that "creating a proposed parcel in a flag lot configuration does not meet the requirements detailed in WTR-440, Section VIII.A.3."

Nothing in the rule, however, supports either of these assertions. Indeed, neither section VIII.A.3 specifically, nor WTR-440 as a whole, make any distinction between "existing" and "proposed" parcels. The rule instead simply defines "parcel," in relevant part, as "a tract or plot of land." WTR-440, § IV (definitions section). Likewise, nothing in section VIII.A.3 or elsewhere in WTR-440 says anything about flag lots—never mind deems them non-compliant with the rule's requirements.

Beyond this, the assertion in the Manager's Decision is simply nonsensical. In one breath, the decision says that section VIII.A.3 doesn't apply to proposed parcels. But in the next, it says that section VIII.A.3 doesn't allow for the creation of flag lots. Well, which is it? Does the rule not apply to proposed parcels, or does it prohibit the creation of flag lots? The entire argument is self-contradictory. Moreover, given that most existing parcels in the City already have water connections, a large percentage of new connections necessarily involve newly subdivided parcels. In sum, the City does not and cannot provide any basis upon which to claim that these provisions don't apply to a proposed parcel—or that they don't apply in certain ways, but other provisions in the rule do.

2. Our project fully satisfies the requirements of the controlling city ordinances.

New water service connections in the City are generally governed by SMC 21.04.050. This ordinance provides that, upon application and payment of the appropriate fee, the City "shall cause the premises described in the application, if the same abut upon a street in which there is a City water main, to be connected with the City's water main by a service pipe extending at right angles from the main to the property line," with certain exceptions defined by ordinance.

One of these is set forth in SMC 21.04.061, which sets forth when a water main extension may be required before a parcel connects to the system. It explicitly provides that an extension may only be required when a parcel does "not abut[] a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary." SMC 21.04.061(A). Under no other circumstances is a water main extension required. Here, of course, proposed Parcel Y has a boundary along SW Elmgrove Street, and there is a standard or suitable City distribution water main along the entirety of its boundary on Elmgrove.

In response, the Manager's Decision asserts that (1) "SMC 21.04.061(A) and SMC 21.04.050 apply to existing parcels abutting a suitable or standard water main"—implicitly arguing that they do not apply to proposed parcels—and (2) WTR-440 is founded upon the Director's power to "establish criteria, rules, and procedures to implement…subsection 21.04.061.A," and (3) Parcel Y "will be in a flag lot configuration and subject to WTR-440 section VI.C.3.c."

These objections are readily dismissed. As with the provisions of WTR-440 discussed above, nothing in either of these ordinances (or anything else in chapter 21.04 SMC) limits their applicability to existing parcels. And while the Director has the authority to establish rules to implement SMC 21.04.061(A), the power is limited to that end: implementation of the written terms of the ordinance. He does not have the authority to promulgate requirements that contradict or exceed the requirements of the ordinance. But that is exactly the City is attempting

to do here via the imagined dichotomy between existing and proposed parcels, the purported prohibition on flag lots, and the overly expansive terms of WTR-440 § VI.C.3.c.

3. We are not proposing a "spaghetti line," and our proposed connection is far shorter than the maximum length allowed under SPU's rules.

Over the past few months, multiple City officials have stated that Parcel Y's proposed connection to the water main on Elmgrove constitutes an impermissible "spaghetti line." This simply isn't so. The term "spaghetti lines" specifically refers to winding private lines under public right of ways that connect a main to distant parcels not adjacent to the main. *See* Exhibit D (letter from engineer Donna Breske). Here, however, Parcel Y's proposed connection tees off the Elmgrove main at a right angle and directly enters Parcel Y—exactly as set forth in SMC 21.04.050. It does not snake through the city right-of-way or around or through other parcels.

In response, the manager's decision asserts that "long, private water lines are often referred to as 'spaghetti lines' regardless of whether they change direction." As described above, this is simply untrue. More fundamentally, nothing in the rules or the city code defines "spaghetti line" or empowers the City to deny service based on characterizing a line in such a manner—the City has simply thrown the term out there and conjured up its own definition in an effort to rationalize its demands. Moreover, to the extent that the rules do speak concerning the length of private connections, they expressly allow for private lines up to 300 feet long in various instances. *See* WTR-440, §§ VII.A.6.c and VIII.D.2. For Parcel Y, the proposed line is less than half of this, at 140 feet long. Given all of this, the City's vague speculation about future "leaks and other maintenance problems" on long private connections, and its uncodified "inten[tion] to create the shortest perpendicular water line and connection to a property" don't provide a legitimate basis for the City's demands.

4. WTR-440, section VI.C.3.c isn't authorized by city code—and even if it were, our proposal complies with its terms.

Multiple City officials have cited Director's Rule WTR-440, section VI.C.3.c as a basis for requiring the demanded main extension. This subsection provides that

> any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary requirement.

There are multiple problems with the City's reliance on this rule here:

(a) This rule exceeds and/or contradicts the requirements of the city code, state law, and the federal and state constitutions, and must give way to those superior enactments.

(b) We did not design our project in this manner to avoid the water main requirements; instead, the design was a result of the City's storm and sanitary sewer drainage requirements. The City allows us to connect Parcel Y's side sewer to Elmgrove's sewer main.

(c) Perhaps most fundamentally, this rule doesn't bar our proposed connection to Elmgrove. To wit, the rule only mandates that we follow "the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment." In this case, "*before* the division, redivision, or lot boundary adjustment" there was no Parcel Y and thus no new parcel that could trigger any water main requirement, as the existing Parcels X and Z had existing water connections.

In response to point (c), the manager's decision asserts:

> The rule applies to this project because prior to the flag lot configuration a new development on Parcel Y would trigger a water main extension requirement. The rule prevents a project from utilizing a flag lot with a long private water line from reaching a standard or suitable main the parcel previously shared no boundary with.

This is both non-responsive to our argument and completely nonsensical on its own terms. Again, the rule simply requires a permit applicant to comply with "the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment." Here, we have three lots, only two of which (Parcels X and Z) existed "before the division, redivision, or lot boundary adjustment." Given that both of these parcels had existing water connections, there simply were no "installation requirements" that applied "before the division, redivision, or lot boundary adjustment" under plain language of the rule.

Addressing the City's specific claims, first, it is a fiction to describe Parcel Y as having had a "prior configuration." Parcel Y is a brand-new, not-yet-platted lot—by definition, this is the original configuration of the lot. Second, the section VI.C.3.c is completely silent as the permissibility of flag lots or long private water lines—the City's claim to the contrary imparts a meaning to the rule's language far beyond what it will bear. Of course, as noted above, our proposed connection is less than half as long as the 300-foot maximum private connection allowed under other portions of WTR-440.

Comparing our project site to the corresponding lots on the other side of 39th Avenue is also instructive. Specifically, the parent parcel of Parcel Y could be subdivided into two lots oriented north-south fronting on Elmgrove, similar to (but wider than) the lots located across 39th Avenue fronting on the northwest corner of Elmgrove and 39th. *See* Exhibit B. Under this configuration, there would be no question that both lots could tap into the Elmgrove water main. Given this, demanding a water main extension based on a different configuration that seeks to minimize impacts to the neighborhood elevates form over function. Additionally, the area on the west side of 39th Avenue that mirrors our project site on the east side has already been subdivided into four lots, all of which have existing water connections. It is thus exceptionally unlikely that there will ever be any future connections to a 39th Avenue water main—or any basis for the City to demand that a 39th Avenue water main be extended to connect to the main in Monroe Street.

5. SPU's rules exceed or contradict the requirements of city code, state law, and the state and federal constitutions.

SMC 21.04.061's grant of authority to the Director to establish criteria, rules, and procedures to implement the code does not empower the Director to promulgate requirements that exceed or contradict the requirements of the city code, state law, or the federal or state constitutions.

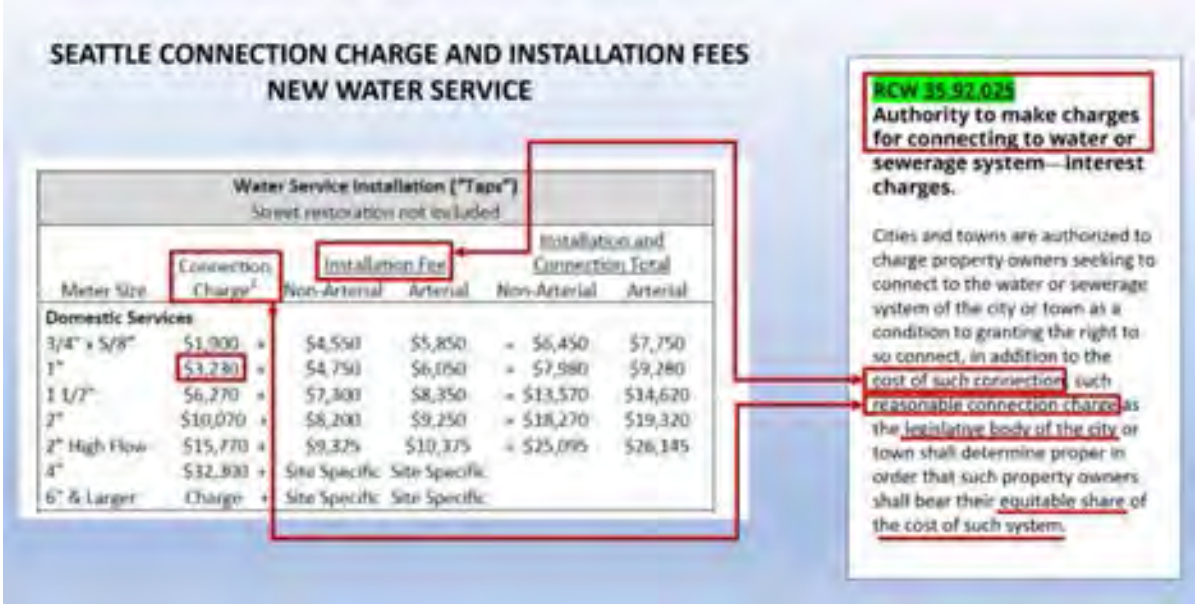
In response to this elementary proposition and point 4(a) above, the manager's decision simply offers the conclusory assertion that it has not implemented any requirements that exceed or contradict the requirements of city code, state law, or the federal or state constitutions. But, as described both here and elsewhere in this request for review, that simply isn't true.

Agencies such as SPU are creatures of their governing entities—here, the City of Seattle—and their powers are circumscribed by their enabling legislation or ordinances. Here, as described above, chapter 21.04 SMC sets forth an exclusive list of requirements for a property to connect to City water service, and an exclusive list of conditions under which a main extension may be required. Per SMC 21.04.050, upon application and payment of the appropriate fee, the City "shall cause the premises described in the application, if the same abut upon a street in which there is a City water main, to be connected with the City's water main." And per SMC 21.04.061, a main extension may only be required when a parcel does "not abut[] a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary."

Nothing in these ordinances says "unless the lot is a flag lot," or "unless the frontage is via a flag lot." Nor does SPU's power to promulgate implementing ordinances allow it to add such substantive requirements to the ordinance's list of exclusive criteria. But in disqualifying certain parcels that have street frontage abutting a main from connecting to that main, and in demanding main extensions for parcels that already abut a main, that's exactly what SPU has wrongfully endeavored to do via WTR-440 (and particularly section VI.C.3.c).

6. Neither state law nor the federal or state constitutions allows the City to demand extension of a water main under these circumstances.

The water main extension demanded by the City here as a condition of connecting Parcel Y to the system will cost approximately $355,000, while the standard one-inch connection and installation fee—which is specifically meant to address the burden on the system resulting from the new unit—is $7,980 (see graphic below). The City's demand accordingly violates both the governing state statutes and the federal and state constitutions, all of which require that any condition placed on Parcel Y's connection to the water system be proportional to the burden that it places on the system.



The City's authority to regulate its water system generally flows from chapter 35.92 RCW. Both here and elsewhere, the City has behaved as if this authority is essentially limitless, allowing it to condition new connections to the system however it deems fit. But this simply isn't so. Chapter 35.92 RCW, while authorizing the City to levy a "charge" as a condition of connection, expressly limits such a charge to a property owner's "equitable share of the cost of the system," plus the actual cost of connection. RCW 35.92.025.

Chapter 82.02 RCW likewise forbids the City from imposing "any tax, fee, or charge, either direct or indirect," on real property development, except as otherwise allowed in the chapter. RCW 82.02.020. One of those exceptions allows cities to impose water "system charges." *Id.* But, mirroring the restriction set forth in RCW 35.92.025, the statute expressly limits those charges to "the proportionate share of such utility or system's capital costs" that the city "can demonstrate are attributable to the property being charged." *Id.*; *see also* RCW 82.02.050 (authorizing impact fees on new development, but limiting them to the proportionate share of costs of system improvements that are reasonably related to and reasonably benefit the development).

In the Manager's Decision, the City blithely asserts that RCW 82.02.020 doesn't apply to water main extensions, undoubtedly relying upon the portion of the statute stating that it does not "expand or contract any existing authority" of cities to impose "system charges." Of course, saying that the statute doesn't "expand or contract" the City's pre-existing authority is very different than saying that the statute doesn't apply at all. More importantly, per RCW 35.92.025, and in accord with chapter 82.02 RCW, the City's pre-existing authority to levy charges as a condition of connection has always been limited to the property owner's "equitable share of the cost of the system."

In addition, apart from the governing statutes, the takings clauses of the state and federal constitutions require governmental fees or other exactions or conditions associated with

development to bear a rational nexus to the proposed project, and to be roughly proportional to the burden placed on the government resulting from the proposed project. *See*, *e.g.*, *Nollan v. Calif. Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The demanded water main extension here complies with neither of these requirements.

The Manager's Decision discusses various aspects of takings law that are generally inapposite to this case, and don't address the nexus and proportionality requirements set forth in *Nollan*, *Dolan*, and their progeny. Here, there is no nexus between our project and the need for water service on the one hand (which is readily available via Elmgrove), and the demanded water main extension on the other. Even more, the water main extension is wildly disproportionate to the burden placed on the city water system resulting from the development of Parcel Y, costing hundreds of thousands of dollars more than the standard connection charge—which is specifically meant to address the burden on the system resulting from the new unit. The discrepancy is grossly—and unconstitutionally—disproportional.

Finally, it is false to assert (as the Manager's Decision does) that the City is not demanding a water main extension in exchange for a building permit, or that it is not threatening to withhold water availability, or that there is any option for us here other than to comply with the City's demand. As things stand, the City will not issue our permits unless we build the water main extension. The City will not grant us water unless we build the water main extension. And, as noted above, given that the other side of 39th Avenue is already fully subdivided and connected to water service, it is fanciful to surmise that another developer (1) will extend the main in the future (never mind that conditioning our project on the speculative future actions of a third party is a denial of due process), or (2) will connect to the main extension demanded of us here and pay a latecomer fee (which still wouldn't fully address the unconstitutional disproportionality between the demanded main and our project's burden upon the system).

7. The demanded water main extension isn't necessary, and is in fact affirmatively harmful.

At bottom, it is plain that the demanded water main is in no way necessary, either as a matter of engineering or city code, for the development of this project. Instead, as city attorney Andrew Eberle's letter of March 28 makes clear, the City simply believes that the demanded main will "encourage the development of a water main grid system" that "produce[s] good water flow and minimizes disruption to customers" as a general matter, and are "beneficial for water quality and increase the amount of predictability and uniformity for current and future homeowners and developers." Exhibit E (letter from Andrew Eberle to Jenna Walden (Mar. 28, 2023)). SPU staff have echoed this, both in the Manager's Decision and elsewhere, claiming that the "water main will also facilitate future gridding that would result in increased fire flow and system reliability." *See also* Exhibit F (email from Jeff Bingaman to Jenna Walden (Mar. 8, 2023)). While these are laudable goals perhaps, they are systemic concerns that inure to the public-at-large and must be paid by the public-at-large; they are not project-specific impact fees that may be foisted upon a single property owner.

Moreover, it is simply wrong to assert, as the City has, that connecting via a new water main in 39th Avenue is technically superior to connecting to the existing main in Elmgrove. Connecting

via a dead-end main in 39th Avenue is fraught with guaranteed, ongoing maintenance and water-quality issues. *See* Exhibit D (letter from Donna Breske). Conversely, the potential issues associated with maintaining a standard, 140-foot private connection to Elmgrove are purely speculative (and, even if they came to fruition, no different than the issues faced by any homeowner with respect to their water connection). *Id.*

EXHIBIT LIST

1. Exhibit A: Proposed Site Plan
2. Exhibit B: Alternative configuration of parent parcel 8014 39th Ave SW
3. Exhibit C: Existing parcel layout of block
4. Exhibit D: Letter from PE Donna Breske: engineering analysis
5. Exhibit E: City Attorney letter dated March 28, 2023
6. Exhibit F: Email from Jeff Bingaman dated March 8, 2023
7. Exhibit G: Manager Determination Review Denial letter dated May 18, 2023
8. Exhibit H: Deepest point of Parcel Y
9. Exhibit I: Revised WAC application and property owner addendum
10. Exhibit J: Email to Andrew Eberle about legal analysis (letter dated March 8, 2023)

EXHIBIT A

PROPOSED SITE PLAN

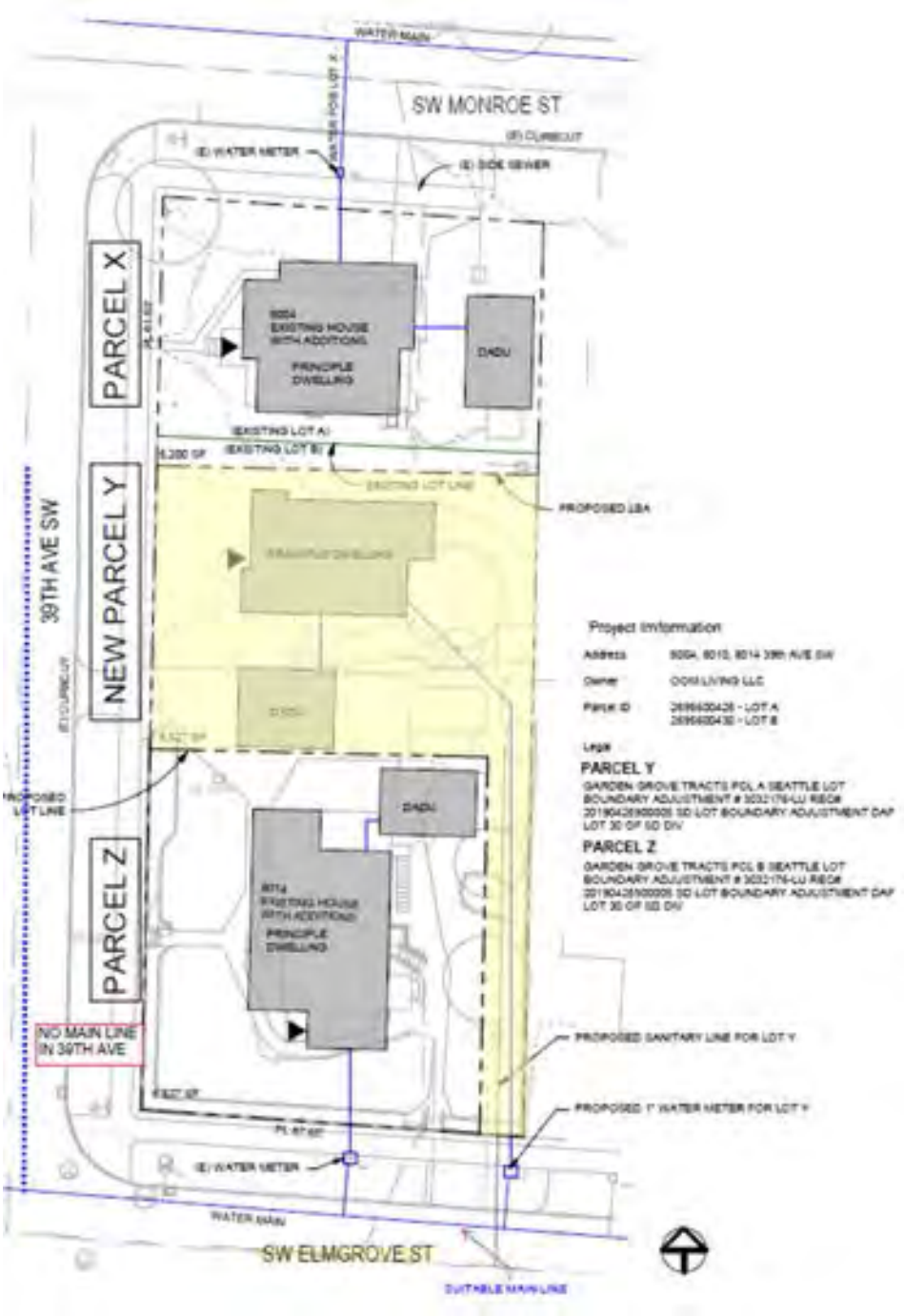


EXHIBIT B

POTENTIAL ALTERNATIVE PARCEL CONFIGURATIONS THAT WOULDN'T TRIGGER A MAIN EXTENSION

In the Manager's Decision, the City asserts:

> "*The rule applies to this project because prior to the flag lot configuration a new development on Parcel Y would trigger a water main extension requirement. The rule prevents a project from utilizing a flag lot with a long private water line from reaching a standard or suitable main the parcel previously shared no boundary with.*"

There is more than one way to configure a lot division and our short plat configuration could just as easily be divided into two lots oriented north/south-oriented lots as well, with one located east of the other. Yet SPU Managers claim *the only* way this parcel could have been subdivided is if Parcel Y's single street frontage was on 39th Ave SW, thus requiring a main extension.

SDCI would have allowed the existing 87.65' Elmgrove frontage to be subdivided into two parcels on Elmgrove Street frontage approximately 44'+/- wide. Why does SPU claim that two parcels on Elmgrove Street with 10' wide frontage and 77.65' wide frontage are fraught with different issues that result in disallowing a connection?

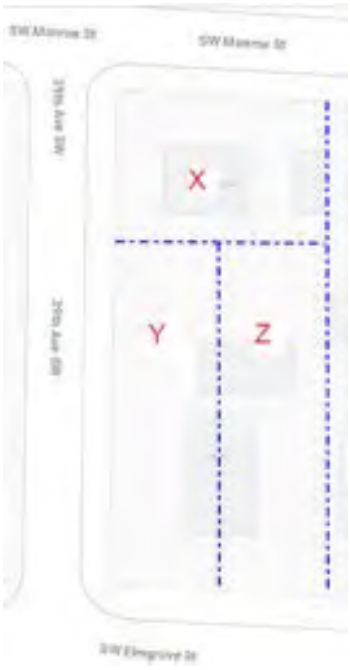
NO MAIN EXTENSION REQUIRED	OUR CURRENT PROPOSAL MAIN EXTENSION REQUIRED
	

EXHIBIT C

EXISTING CONDITIONS ACROSS 39TH AVE SW

This parcel map shows our project site on the east side of 39th Avenue SW (8004 and 8014 SW 39th Avenue), and the corresponding lots west across the street. Not only does this disprove the City's claim that the only way existing Parcel Z (8014 39th Ave SW) could have been subdivided was to create a new parcel that does not abut a street with a suitable main off 39th Ave SW.

This project's parent parcel is six feet wider than the corresponding lots across the street. We could have had an east/west subdivision which would have avoided a main extension. A flag lot is not that much different in form and function.

In addition, if this proposed development was built on the east side of 39th, the odds that additional parcels and dwellings would leverage a dead end main line under the street is extremely low. Assuming the creation of our Parcel Y, six out of seven parcels on either side of 39th have existing water connections. Both sides of this block are maxed out if and when our proposed development is built out. The dead end main would be under-utilized for decades.

EXHIBIT D

Donna Breske
& Associates
Land Use Consulting & Civil Engineering

Snohomish, WA

Phone: 206-715-9582

June 15, 2023

To: Seattle Public Utilities

Subject: Request for Director's Review Oom Living
SPUE-WAC-23-00381

DEAD END WATER MAIN DESIGN IS NOT SOUND ENGINEERING DESIGN

A dead-end water main extension is not a sound engineering design. It is problematic and should be avoided. The basis of the concern is the operational flow within the main is limited due to only one water meter connection. One water meter does not pull water at a volume needed to ensure movement, (i.e. turnover) of water within the main as required to prevent stagnant water from accumulating within.

SPU's mandate for a 173-foot installation of an 8" water main with a dead end will require maintenance and monitoring to ensure the water service connection from it does not result in stagnant water provided to the homeowner in the city. Maintenance includes regular flushing and wasting significant amounts of potable water when doing so. The flushing operation also results in the potable water flowing to the City storm drainage system.

The best engineering practice is to connect water service to the existing main within Elmgrove Street as proposed by the project proponent. Connection to the existing water main within Elmgrove Street provides the most consistent and best quality water service to the end user. The existing main has numerous water service connections and hence has numerous points of flow taken from the main that preclude the concern of stagnant water accumulation. Furthermore, connection in Elmgrove Street will require none of the maintenance and monitoring that connection to a dead-end main in 39th Ave S.W. will require.

A connection to the existing main within Elmgrove Street allows a water meter to be set at a property line adjacent the right-of-Way of Elmgrove Street. The responsibility of the city for maintenance is only for those components within the public right-of-way that are the water meter and the service line from the 8" main to the water meter.

WATER SERVICE LINE ROUTED ACROSS PRIVATE PROPERTY IS NOT A SPAGHETTI LINE

The service line behind the water meter that is routed to the house is on private property and any maintenance is not the responsibility of the city. It is a private line located on the proposed lot.

EXHIBIT D

SPU's assertation that the private service line behind the water meter on private property is a spaghetti line is not correct. It is simply a private service line on private property.

The term "spaghetti-line" is a field term and applies to water service lines behind the water meter that are buried and routed within the public right-of-way across the frontage of other properties in order to reach the intended parcel. That is not the case with the water service line behind the water meter as proposed by this project proponent. The service line behind the water meter crosses the edge of right-of-way property line and enters onto private property immediately thereafter.

This is a screenshot of the project site at 8004-14 39th Ave SW from Seattle's Development Services Office Water & Sewer Map. A parcel across the street, 8007 39th Ave SW and some other parcels on the block north (circled in green), illustrates an actual "spaghetti line": a private line that runs under the city right-of-way. This is not what is being proposed at Parcel Y by this property owner.

WATER SUPPLY TO THE AREA IS ALREADY EXCEEDES REQUIRED FLOW TARGETS

There is no engineering reason to support an extension to the water main system. The city has adequate water supply as documented within Appendix D of the 2019 Seattle Public Utilities Water

System Plan. Section 3.1.3 states, "The analysis found that the majority of the over 190,000 parcels in SPU's retail service area meet or exceed the fire flow performance target."

Per the Water System Plan, the fire flow targets, which are based on land used zoning, are as follows:

- Single Family Residential – 1,000 gallons per minute
- Multi-Family Residential – 1,500 gallons per minute

Appendix D and Figure 1-A provide a fire flow performance map of the entire City of Seattle Water system. Not only does the water system provide the required fire flows to support single family zones and multi-family, over half of the area of the City can deliver fire flows of 3,000 gallons per minute or greater.

Furthermore, the fire flow performance map represents hydraulic calculations of available Maximum Daily Demand or MDD. MDD factors in maximum anticipated domestic use when calculating fire flow rates.

Additionally, the Seattle Fire Code Section 507 sets the minimum fire flow based on occupancy and size. Hence the 2019 Water System Plan that sets target flow rates based upon zoning such as single family residential and multi-family residential.

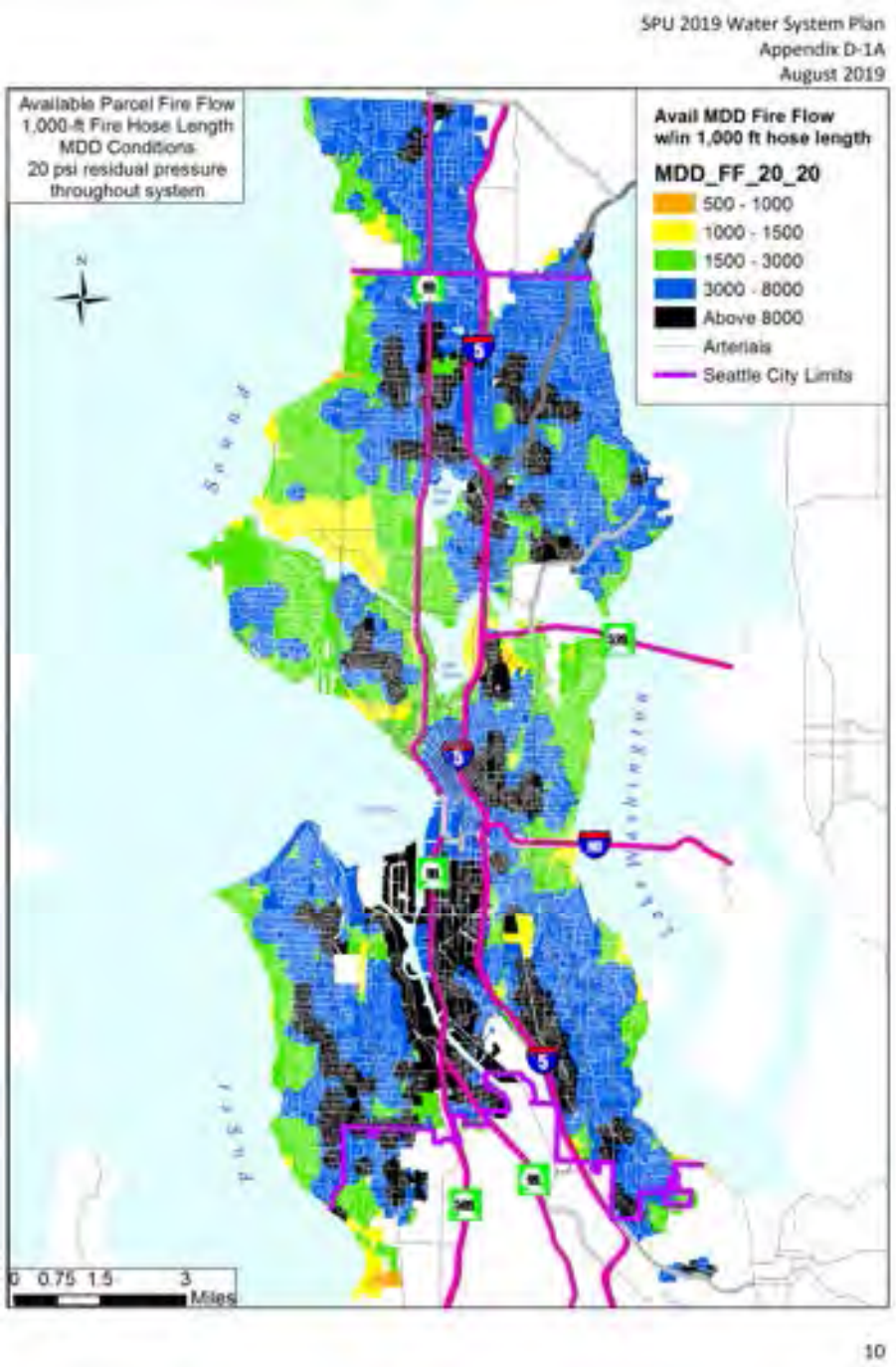
The Seattle Fire Code mitigates risk from fire by a focused approach by increasing the structure's resilience to fire. This limits the scope impact to the demand to a **specific development only**.

Seattle Fire Code section 507 and Appendix B Tables B105.1(1)(2). Listed in the tables is the minimum fire flow based on fire area and allows either a sprinkler system or allows for larger fire areas built with a higher level of protection for the construction.

Why would a single homeowner or developer pay to install water mains for a entire block when they can focus to minimize the risk that is only associated with the proposal? There simply is no supporting engineering analysis or basis within the Seattle Fire Code, that would lead a reasonable person to conclude upgrades to the water distribution system are needed to support new development.

con't on next page . . .

EXHIBIT D



Sincerely,

Donna L. Breske

Donna L. Breske, P.E.
Mobile: 206-715-9582

EXHIBIT F

Gmail Jenna Walden <jewalden@gmail.com>

Water Availability Certificate - 8014 39th Ave SW

Bingaman, Jeff <Jeff.Bingaman@seattle.gov> Wed, Mar 8, 2023 at 11:24 AM

To: "jewalden@gmail.com" <jewalden@gmail.com>
Cc: "Burchard-Juarez, Keri" <Keri.Burchard-Juarez@seattle.gov>, "Courtney, Christopher" <Christopher.Courtney@seattle.gov>, "Ford, Jon" <Jon.Ford@seattle.gov>

Hi Jenna,

Keri asked me to investigate this for you. Please see below:

Project Background:

The original site plan submitted for Not Approved WAC SPUE-WAC-21-02133 (attached), shows a flag lot to Parcel B and lists Parcel C as the “last developable lot” (see attached site plan). The existing lot abutting SW Monroe St was not included in the original plan submitted. Per SPU Director’s Rule WTR-440 – Requirements for Water Service:

- **Flag lots:** VI. Water Availability Certificate.

  C. An approved WAC is required for approval of building construction or land use permits within SPU’s direct service area. There are four WAC statuses that may be issued depending on the following conditions:

  3. Not Approved

  c. Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this

rule that would apply before the division, redivision, or lot boundary adjustment.

What the above text on flag lots means is that your division of Parcel B to include a 10’ section abutting SW Elmgrove St does not reduce or eliminate the requirement to install an abutting watermain extension across the full parcel in 39th Ave SW.

- **Last Developable Lot**: VIII. Distribution Water Main Extensions

  C. Last Developable Lot Exemption SPU shall waive the requirement to install a standard water main when:

  1. The water main extension requirement is applicable to a parcel within a single-family zone for the entire block; and

  2. The parcel is the last developable lot, as determined by SPU; and

  3. There are no identifiable plans for future upzoning per the governing jurisdiction; and

  4. There is no potential for future gridding, such as a natural barrier, ravine, or an open body of water.

This project does not meet the following provisions:

2. Parcel C is not the last developable lot as Parcels A and B are being developed on this block.

4. There is a potential for gridding.

The statement that parcel C is the last developable lot is not accurate based upon SPU policy.

The subsequent site plan submitted for this project under SPUE-WAC-22-01362 proposed to divide two parcels of land into three parcels (see attached site plan).

- "New Parcel Y" abuts 39th Ave SW which does not have any water infrastructure requiring a water main extension in 39th Ave SW.
- "New Parcel Z" abuts SW Elmgrove St which has an existing distribution water main. A new water service connection can be made to this water main.
- "New Parcel X" abuts SW Monroe St which has an existing distribution water main. A new water service connection can be made to this water main.

The site plans submitted for all subsequent WAC requests were similar enough to the original request requiring a water main extension that new WACs were not generated. This is our standard procedure to eliminate the redundant production of duplicate WACs and each of those submissions was closed to the original Not-Approved WAC.

The latest corrected plan submittal for 3040144-LU (see below screen shot) was submitted after the WACs were closed. This plan was not submitted with a WAC request but also shows a flag lot which would not preclude the water main extension as outlined above.

Code Authority:

SPU's authority to require water infrastructure as a condition of permit approval come from the following:

- **RCW 19.27.097 - Building permit application—Evidence of adequate water supply—Authority of a county or city to impose additional requirements—Applicability—Exemption—Groundwater withdrawal authorized under RCW 90.44.050.**

1)(a) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. An application for a water right shall not be sufficient proof of an adequate water supply.

- **SMC 21.04.061 - Water mains required before connections**

  A. In case of application to supply water service to a parcel not abutting a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary, the Director will require construction of a standard distribution water main abutting the property before a connection is made, unless otherwise approved by the Director. The standard distribution water main shall be constructed in the abutting street to the extent of the parcel boundary, as required by the utility for the orderly extension or efficient gridding of the public water system. The standard distribution water main shall be constructed in accordance with the City's Standard Plans and Specifications and other applicable design standards and guidelines. The Director, pursuant to Chapter 3.02, shall establish criteria, rules, and procedures to implement this subsection 21.04.061.

  B. Where water main construction is required and the applicant and/or other property owners jointly wish to construct the required water mains and appurtenances, the Director is authorized to enter into a water main addition or extension agreement as set forth in application and agreement forms provided by Seattle Public Utilities.

- **SPU Director's Rule WTR-440 – Requirements for Water Service**

  VI. Water Availability Certificate

  C. An approved WAC is required for approval of building construction or land use permits within SPU's direct service area. There are four WAC statuses that may be issued depending on the following conditions:

  3. Not Approved

  a. A water main extension or other water system improvement is required. In order to receive an Approved WAC, an Approved with Contract WAC will be issued when the applicant signs a contract provided by SPU to make the water main extension or other required system improvement; or

b. SPU may require water system improvements other than a water main extension in order to serve the parcel. These improvements may include but are not limited to new fire hydrants and valves. If changes to the distribution system are required to provide water to the parcel, SPU shall describe the required changes to allow new service connections.

c. Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment.

The project may dispute the utility system improvement requirements per Director's Rule ENG-430- Utility System Improvement Dispute Process if it meets the dispute criteria.

Most recent plan uploaded for land use permit 3040144-LU.

1 Site Plan - Impervious Areas
1" = 20'-0"

I hope this answers your questions.

Best Regards,

Jeff Bingaman

Division Director, Development Services Office

City of Seattle, Seattle Public Utilities

O: 206-684-5901 | M: 206-556-0339 | jeff.bingaman@seattle.gov

Facebook | Twitter

-

The DSO Walk-In Center on the 27th floor of the Seattle Municipal Tower is permanently closed, but we are still open for business! You can contact us during our regular business hours at SPU_DSO@seattle.gov, Monday through Friday, 8:00am to 5:00pm.

From: Jenna <jewalden@gmail.com>
Sent: Monday, March 6, 2023 12:43 PM
To: Burchard-Juarez, Keri <Keri.Burchard-Juarez@seattle.gov>
Cc: Matt Wasse <matt@sww-ai.com>
Subject: Water Availability Certificate - 8014 39th Ave SW

CAUTION: External Email

[Quoted text hidden]

4 attachments

image002.png
10K

Not Approved SPUE-WAC-21-02133 - 8014 39th Ave SW-2.pdf
52K

WAC SPUE-WAC-21-02133 Site Plan.pdf
255K

SPUE-WAC-22-01362 Site Plan.pdf
106K

EXHIBIT H

DEEPEST POINT OF PROPOSED PARCEL

The deepest portion of this parcel from right-of-way to the northernmost corner is 151.43 lf.

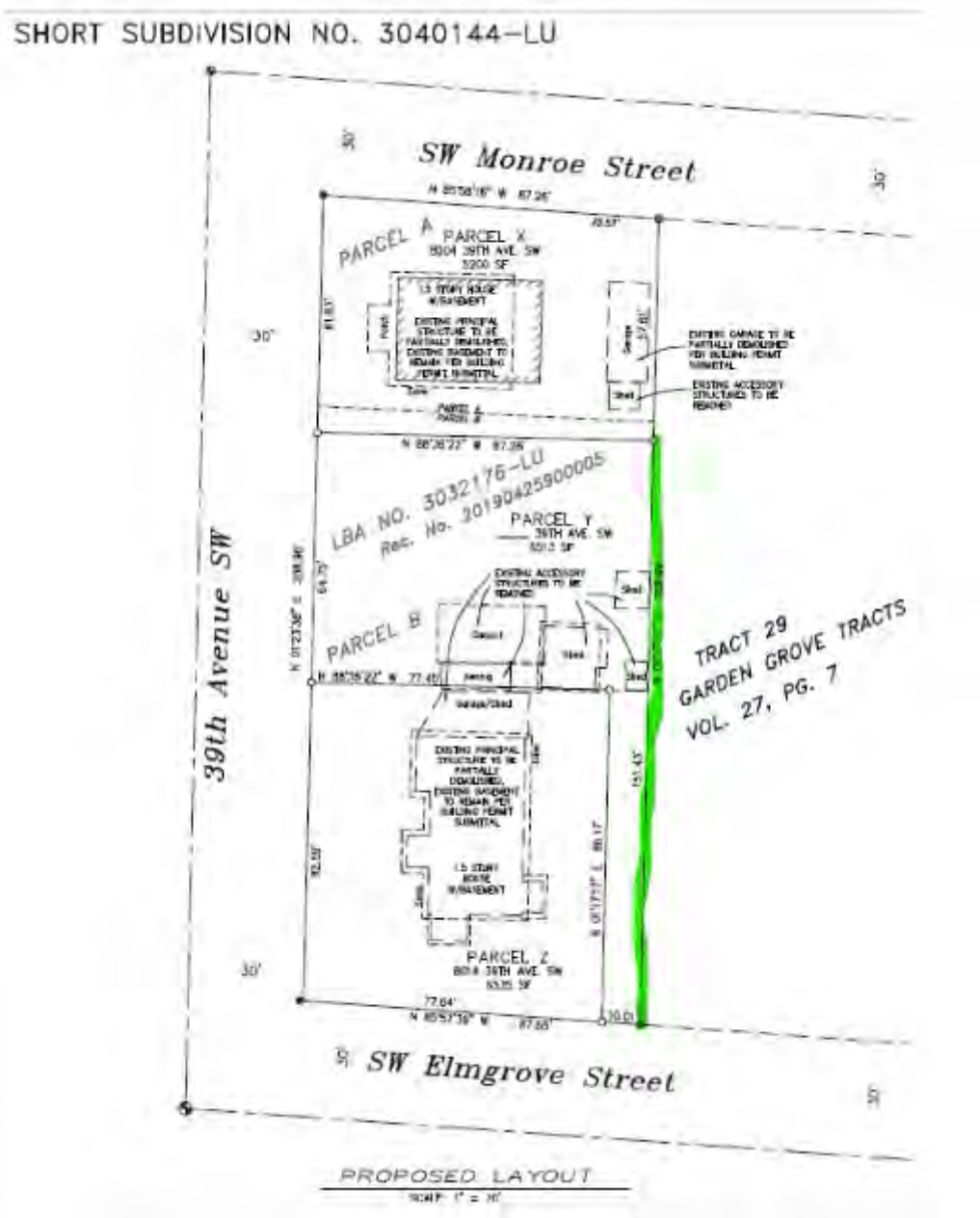


EXHIBIT I

Development Services Office
700 Fifth Ave, Suite 2748 | PO Box 34018
Seattle, WA 98124
(206) 684-3333 • SPU_DSO@seattle.gov

Water Availability Certificate (WAC) Application

A Water Availability Certificate (WAC) is required for new development to confirm water infrastructure exists for the intended use of the project (RCW 19.27.097). In some cases, water system improvements are identified for a property to receive water service.

PREPARE A COMPLETE APPLICATION

- ☑ Complete this WAC Request Application.
- ☑ Attach a completed site plan with this application that meets the "Preliminary Site Plan" requirements listed in Tip #103 - Site Plan Requirements.

SUBMIT YOUR APPLICATION AND SITE PLAN – Use one of the following options:

- ☑ Email pdf application and site plan to: SPUWaterAvailability@seattle.gov.
- ☐ Hand Deliver: Seattle Municipal Tower – 700 Fifth Ave, Suite 2748, Seattle, WA 98101
- ☐ Mail: Development Services Office, Seattle Public Utilities, PO Box 34018, Seattle, WA 98124

WHAT HAPPENS NEXT

After you submit your application, we will review the project and complete the WAC. The contact listed on the application will receive an email with the completed WAC. For more information, please contact SPUWaterAvailability@seattle.gov, (206) 684-3333, or see CAM 1201.

PROPERTY OWNER INFORMATION

Name	Email	Phone
Oom Living, LLC	oomlivingllc@gmail.com	206-898-6313

Address	City	State	Zip
4895 76TH ST SW, #D701	Mukilteo	WA	98275

PROJECT INFORMATION

Is this project located in the City of Seattle? ☑ Yes ☐ No

Project Address(es)	Application Date
8010 39th Ave SW	3/31/23

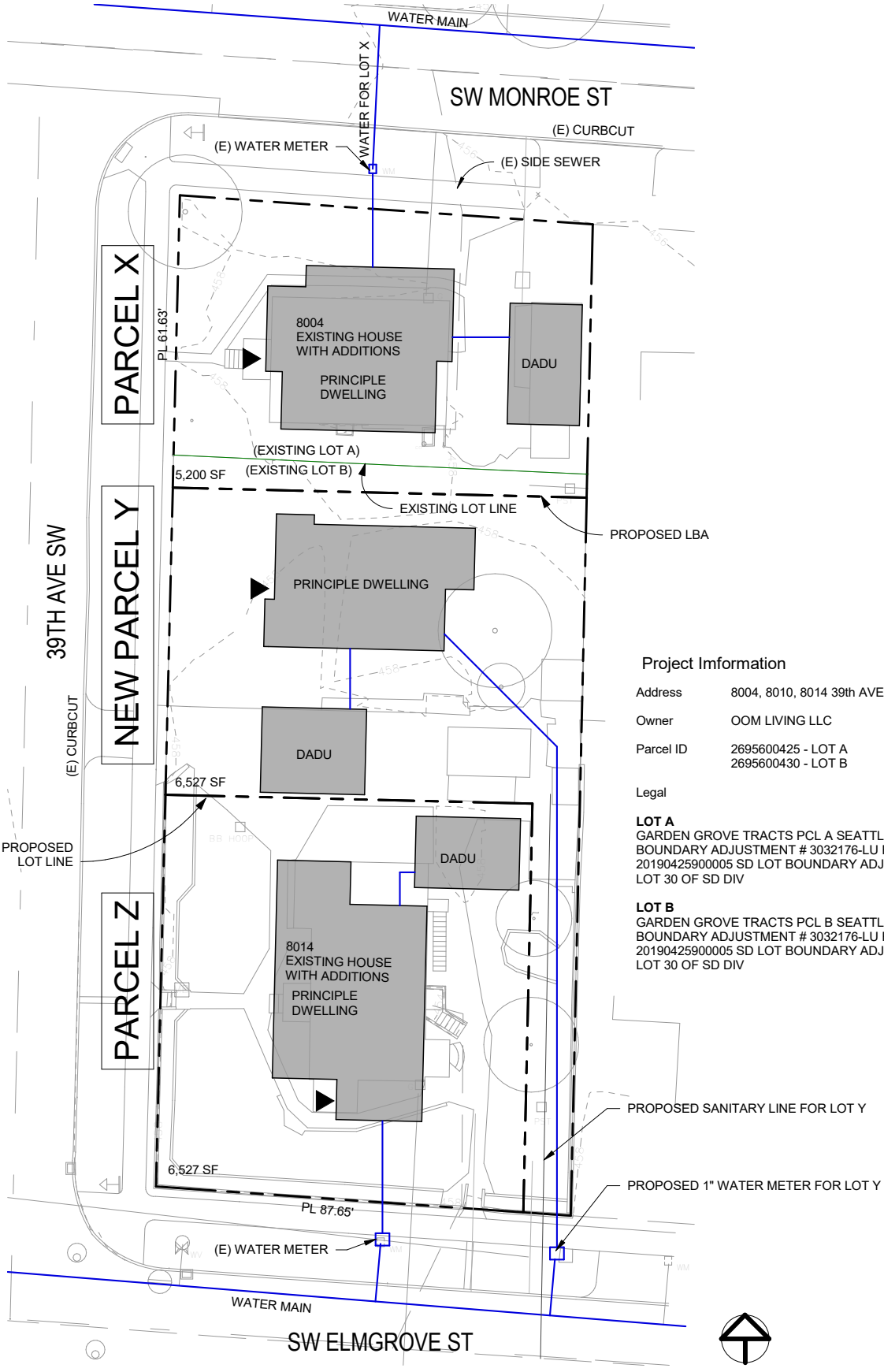
King County Parcel #'s	SDCI Permit #'s *If Applicable*
269560-0430	3040144-LU, 6928679-CN

Select Type	3/4"	1"	1 1/2"	2"	2" High Flow	4"	6"	8"	Other
Domestic	☐	☐	☐	☐	☐	☐	☐	☐	
Fire				☐		☐	☐	☐	
Combination (Fire/Domestic)		☑	☐	☐	☐	☐	☐	☐	

Additional Information:

Requested WAC should be approved for ONE 1" water line connection to new "Parcel Y" via shared boundary abutting SW Elmgrove Street which has a suitable water main line. Both 8004 and 8014 are existing residences and have existing connections to city water via meter. This request is for one additional connection to one proposed residential dwelling + DADU. WTR-440 Director's Rule VIII.A.3 applies. This request is for our project that meets all criteria listed in VIII.A.3: a) "has a boundary with a standard distribution or suitable water main along the full extent of that boundary; b) "one boundary contains a standard distribution or suitable water main along the full extent of the boundary", c) "a single water service is required".

Please see attached letter for more information.



Project Imformation

Address	8004, 8010, 8014 39th AVE SW
Owner	OOM LIVING LLC
Parcel ID	2695600425 - LOT A 2695600430 - LOT B

Legal

LOT A
GARDEN GROVE TRACTS PCL A SEATTLE LOT BOUNDARY ADJUSTMENT # 3032176-LU REC# 20190425900005 SD LOT BOUNDARY ADJUSTMENT DAF LOT 30 OF SD DIV

LOT B
GARDEN GROVE TRACTS PCL B SEATTLE LOT BOUNDARY ADJUSTMENT # 3032176-LU REC# 20190425900005 SD LOT BOUNDARY ADJUSTMENT DAF LOT 30 OF SD DIV

Sheet

PA2

Short Plat

OOM Living
8004 39th Ave SW
03/31/23

SHUGART WASSE WORKSHOP

April 4, 2023

This information is an addendum to my application for 8004-8014 39th Ave SW to ensure that the correct assumptions are made about my project. My project meets all municipal code tests that should NOT require a main extension.**I would like to please request an expedited review** as the dispute over the earlier issued WAC has greatly impacted our construction schedule and plans and permits have been substantially delayed while this is sorted.

ASSUMPTIONS:

1. **I am not proposing a "spaghetti line"** in the City ROW. There is an abutting boundary for Parcel Y on Elmgrove St that can access the water main easily, safely and directly. This main line abuts the proposed property boundary to its full extent. There would be no safety, efficiency, maintenance or quality issues involved. We would like to put a 1" water meter line in Elmgrove Street connecting to Parcel Y directly via fee simple property access.
2. **Parcel Y abuts TWO streets:** 39th Ave and Elmgrove. Elmgrove has a suitable main extending to the full extent of Parcel Y's proposed boundary. Cherry-picking 39th Ave SW as the only abutting street that shares a boundary with Parcel Y is incorrect and arbitrary.
3. **Flag lot parcels are a legitimate parcel configuration:** Our flag lot parcel was designed to comply with SPU's new policies on disallowing easements crossing properties for side sewers. There is nothing that disallows flag lot configuration in zoning and land use standards and I was not aware of a water main extension requirement when this short plat was designed. There was no attempt at evasion and WTR440.VI.C.3.c. should *not* apply.

There is ample support in the municipal code and Director's Rules WTR-440 to allow connection via Elmgrove Street listed below:

1. SMC 21.04.061 - Water mains required before connections
    1. A. In case of application to supply water service to a parcel not abutting a street(s) in which there is a standard or suitable City distribution water main to the extent of the parcel boundary,...NOT APPLICABLE. Code explicitly says plurality of street(s). There is a suitable main in Elmgrove St.
2. WTR440 VII.A.1 New Water Services - General Requirements. The following conditions are required to allow a new water service connection to an existing water main.
    1. In addition to other requirements outlined in chapter 17 of SPU's Design Standards and Guideline, all new SPU water services shall be supplied from

an existing distribution water main when the following conditions exist, as applicable. Items a-f: Criteria met.

2. Items 2-11 are N/A to my project.

3. WTR440 VIII. Distribution of Water Main Extensions
    1. A.1. If the full extent of the parcel boundary does not abut an existing standard distribution or suitable water main,... NOT APPLICABLE
    2. **A.3.a-c. A water main is not required when one parcel: This carve-out exactly meets the criteria of my project, and should be applied if for some reason, SPU continues to attempt to require a water main extension.**
        1. **Has a boundary with a standard or suitable water main along the full extent of that boundary; and Condition met on my project.**
        2. **One boundary contains a standard distribution or suitable water main along the full extent of the boundary; and Condition met on my project.**
        3. **A single water service is required. Condition met on my project.**
    3. B. Unit Lot Subdivisions. A water main extension is not required for a unit lot subdivision when the following conditions are met:
        1. The unit lots share a boundary with more than one street; and Condition met on my project (ps, this criteria also qualifies a flag lot which is inherently disallowed for connection to a main line per the same document both policies are listed on per WTR440, very confusing).
        2. One boundary contains a standard distribution or suitable water main along the full extent of the boundary; and Condition met on my project.
        3. The maximum number of parcels not abutting a standard distribution or suitable water main does not exceed 14; and Condition met on my project.
        4. The installation is feasible when considering site constraints and other construction conflicts. Condition met on my project.

PROBLEM SECTIONS in WTR440: These concerns about the following sections in the Director's Rule document have been brought to the attention of the City Attorney.

WTR440.VI.C.3.c. Any division, redivision, or lot boundary adjustment of land that has the effect of avoiding water main installation or other appurtenance requirements shall not change the installation requirements under this rule that would apply before the division, redivision, or lot boundary adjustment. Director's Rules may have the full weight of the law behind them, but what umbrella statute is this rule based on? How does the authority granted by SMC allow SPU to ignore a legitimate boundary abutting a street with a suitable water main to connect to and exact a main extension? The reliance of SPU's decision to ignore qualifying criteria because of it's "perception" is not fair, predictable or uniform. I would like to know if SPU has and will deny

all flag lot configured parcels going forward in order to cram-down fulfillment of their expansionary goals because of a flag lot's inherent ability to abut more than one street at a time. Have all flag lots been denied direct water connection in the past as well?

WTR440.VIII.C. Last Developable Lot Exemption. SPU shall waive the requirement to install a standard water main when:

1. The water main extension requirement is applicable to a parcel within a single-family zone for the entire block; and Condition met on my project.
2. The parcel is the last developable lot, as determined by SPU; and Technicality of architect labeling on site plan which can be fixed.
3. There are no identifiable plans for future upzoning per the governing jurisdiction; and Based on what? There is zero transparency on what SPU is referencing...an approved upzone in the Comprehensive Plan? I only see "Neighborhood Residential Areas", in the Future Land Use Map. Or is this based on the concept that one day skyscrapers could be any where, some day? Why does a 2023 developer have to pay for a future developer's needs and future impacts on the system? Where in umbrella statutes and ordinances is that supported?
4. There is no potential for future gridding, such as a natural barrier, ravine, or an open body of water. What is the definition of "*potential* for future gridding" and how is it supported by RCW's and SMC intent and language in terms of mandating costly main extensions? This seems to be a made-up term and shows risk of being applied arbitrarily.

LEGAL POSITION OF CITY ATTORNEY - MARCH 2023: In a letter dated March 28, 2023 from the City Attorney's office, I was given an opinion of how to read the Seattle Municipal Code in its requirements for extending a water main and how far. See next page for a screen shot of that opinion.

From Ann Davison, City Attorney:

> To turn back to your main question: "*Can you please provide the section of the Seattle Municipal Code that requires installation of an 8-inch water main beyond the extent of the Parcel "Y" boundary abutting the street?*" Yes. Pursuant to SMC 21.04.061, Parcel Y does not abut a street with a standard or suitable City distribution water main. Therefore, pursuant to SMC 21.04.061, in order to extend and efficiently grid the water system, a standard (8-inch) water main must be constructed in the abutting street (39th Ave SW) from where it connects to the standard water main to the extent of Parcel Y's boundary. Any other interpretation of SMC 21.04.061 would completely defeat the ordinance's command "to extend and efficiently grid the water system."

". . .from where it connects to the standard water main to the extent of Parcel Y's boundary."

This opinion does *not* support a main extension requirement that is looped. He does not say water main(s) and it is only to the extent of the Parcel boundary. A 270' If extension cannot be requested per the City Attorney. The only result SPU can mandate per the City Attorney if they are requiring a main extension is a dead-end mainline stopping at the extent of the parcel boundary. This is not safe, recommended or best practices.

Please contact me with any questions. Thank you very much for your consideration.

Sincerely,

Jenna Walden

206-898-6313

jewalden@gmail.com

EXHIBIT J

Gmail **Jenna Walden <jewalden@gmail.com>**

Revised WAC request - SPUE-WAC-21-021233

Jenna <jewalden@gmail.com> Thu, Mar 30, 2023 at 4:35 PM
To: "Eberle, Andrew C" <Andrew.Eberle@seattle.gov>
Cc: "Burchard-Juarez, Keri" <Keri.Burchard-Juarez@seattle.gov>, "Courtney, Christopher" <Christopher.Courtney@seattle.gov>, Matt Wasse <matt@sww-ai.com>, "donnab@donnabreske.com" <donnab@donnabreske.com>

Mr. Eberle;

Your letter says (page 3):

> *...a standard (8-inch) water main must be constructed in the abutting street (39th Ave SW) from where it connects to the standard water main to the extent of Parcel Y's boundary.*

It does not say "main(s)" and does not conclude that SPU can require a looped main extension per Seattle Municipal Code.

Per the above verbiage within the city attorney's letter, a new WAC is needed to confirm the requirement is per the exhibit below. Hence, we are seeking a new WAC to be in conformance with the wording released from the City attorney's office.


To the extent of Parcel Y's boundary
SW MONROE ST
(E) CURBCUT
(E) DRIVEWAY, 246 SF
(E) GARAGE TO REMAIN, 244 SF
NEW AREA, 190 SF
NEW PARCEL X
(E) BASEMENT TO REMAIN 730 SF
34 SF
EXISTING LOT LINE
NEW PARCEL Y
70 SF
1380 SF
FRONT
240 SF
630 SF
39TH AVE SW
(E) CURBCUT
PROPOSED LOT LINE
345 SF
626 SF
FRONT
NEW PARCEL Z
(E) BASEMENT TO REMAIN 600 SF
1165SF
Connects to the standard water main
SW ELMGROVE ST

Sincerely,