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KING COUNTY SUPERIOR COURT

EASTLAKE COMMUNITY COUNCIL, a
Washington non-profit corporation

No. 14-2-14778-3 SEA

PETITIONER,

LAND USE PETITION
(Ch. 36.70C RCW)

v.

CITY OF SEATTLE, a Washington
Municipal Corporation; JOHNSON & CARR,
LLC; CRESCENDO HOLDINGS, LLC;
MICRO HOUSING, LLC; and JAY
JANETTE;

RESPONDENTS

Pursuant to the Land Use Petition Act, Chapter 36.70C RCW, and Article IV,
Section 6 of the Washington State Constitution, Eastlake Community Council brings this
action and alleges as follows:

1. NAME AND MAILING ADDRESS OF PETITIONER

Eastlake Community Council
c/o Chris Leman, President
2370 Yale Avenue East
Seattle, WA 98102-3310

//
/

1 **2. NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEYS**

2 Jeffrey M. Eustis
3 ARAMBURU & EUSTIS, LLP
4 720 Third Avenue, Suite 2000
5 Seattle, Washington 98104

6 **3. NAME AND MAILING ADDRESS OF LOCAL JURISDICTION WHOSE**
7 **LAND USE DECISION IS AT ISSUE**

8 City of Seattle
9 600 Fourth Avenue
10 Seattle, Washington 98104

11 **4. THE DECISION-MAKING OFFICERS AND DECISIONS APPEALED**

12 4.1 The decision-making officers reaching the decisions at issue are identified
13 below:

14 City of Seattle Department of Planning and Development ("DPD")
15 Diane Sugimura, Director,
16 by Bruce Rips, Senior Land Use Planner, and
17 by Andrew McKim, Land Use Planner Supervisor
18 700 Fifth Avenue, Suite 2000
19 P.O. Box 34019
20 Seattle, Washington 98124-4019

21 4.2 On April 17, 2014, DPD, through Bruce Rips issued an Analysis and
22 Decision approving a Determination of Non-Significance with conditions ("DNS") under
23 Master Use Permit Application 3014488 for the development of a housing proposal
24 located at 2820 and 2822 Eastlake Avenue East consisting principally of two dwelling
25 units, 113 bedroom/bathroom units, two separate kitchens and no parking (also referred
26 to as the "housing proposal.") A copy of the Analysis and Decision, together with its
27 accompanying Notice of Decisions, is set forth at Appendix A to this Petition.

28 4.3 On May 1, 2014, the Eastlake Community Council ("Eastlake") filed an
29 appeal with the Seattle Hearing Examiner of the DNS contained within the Analysis and

1 Decision. Pursuant to the Notice of Decisions, the DNS was the only part of the
2 Analysis and Decision appealable to the Hearing Examiner.

3 4.4 On May 1, 2014, Eastlake also filed with DPD a request for interpretation
4 of issues as to whether the housing proposal approved through the Analysis and
5 Decision conformed to the requirements of the City land use and building codes. A copy
6 of that request is set forth at Appendix B to this Petition.

7 4.5 On May 2, 2014, DPD, through Andrew McKim, determined that issues
8 concerning whether the housing proposal conformed to the requirements of the City
9 land use and building codes (in particular, issues 1, 2 and 6 of Eastlake's interpretation
10 request) could not be addressed through the code interpretation process. A copy of
11 Mr. McKim's determination is set forth at Appendix C to this Petition.

12 4.6 As of the date of this Petition, the information DPD has made available
13 through its website and in its responses to Eastlake's public records requests
14 represents that Master Use Permit 3014488 for a change of use from single family and
15 apartments to congregate housing has not been issued. However, to toll any limitation
16 period that may have been triggered by DPD's refusal to consider issues 1, 2 and 6 of
17 Eastlake's code interpretation request, Eastlake seeks review of those issues through
18 the instant Petition with the intent of joining to this action the appeal of any subsequent
19 final decisions on Master Use Permit Application 3014488.

20 //

21 /

1 **5. IDENTIFICATION OF PERSONS TO BE MADE PARTIES UNDER RCW**
2 **36.70C.040(2)(b) THROUGH (d)**

3 5.1 The local jurisdiction is:

4 City of Seattle
5 600 Fourth Avenue
6 Seattle, Washington 98104

7 5.2 The Analysis and Decision of DPD identifies the applicant as Jay Janette
8 for Micro Housing LLC. On information and belief, Jay Janette is an architect for the
9 parties developing the housing proposal. Application documents identify Mr. Janette's
10 address as follows:

11 Jay Janette,
12 Janette Architecture
13 5309 22nd Avenue NW, Suite B
14 Seattle, WA 98107

15 5.3 Micro Housing LLC is a Washington Limited Liability Company and the
16 entity which the Analysis and Decision states to be represented by Jay Janette. The
17 address for Micro Housing LLC is:

18 Micro Housing, LLC
19 13930 92nd Street SE, Ste. A.
20 Snohomish, WA 98290

21 5.4 On information and belief, the entity developing the proposal is not Micro
22 Housing, LLC, but Johnson & Carr, LLC, a Washington Limited Liability Company
23 formed by Kelten Johnson and Tyler Carr, who are also members of Micro Housing
LLC. The registered agent and address for Johnson & Carr, LLC are:

 Tyler Carr,
 Johnson & Carr, LLC
 506 2ND Ave., Ste 1020
 Seattle, WA 98104-2328

1 On information and belief, Johnson & Carr, LLC may also do business under Johnson
2 Carr, LLC, and JohnsonCarr, LLC, which are not registered with the Corporations
3 Division of the Washington Secretary of State as separate business entities.

4 5.5 The taxpayer and titleholder of record for the properties at 2820 and 2822
5 Eastlake Avenue East is Crescendo Holdings, LLC, whose address is:

6 Crescendo Holdings, LLC
7 13930 92nd Street SE, Ste. A
8 Snohomish, WA 98290

9 5.6 In the proceedings before DPD, the legal representatives for Johnson &
10 Carr, LLC (including JohnsonCarr, LLC) are:

11 Jessica Clawson, and
12 Courtney Kaylor
13 McCullough Hill Leary, PS
14 701 5th Avenue, Ste. 6600
15 Seattle, WA 98104

16 5.7 Pursuant to RCW 36.70C.050, Petitioner will join any additional parties
17 identified to Petitioner as necessary for the just adjudication of this Petition.

18 6. FACTS DEMONSTRATING STANDING

19 6.1 Eastlake Community Council, a Washington non-profit corporation, is a
20 membership organization composed of people who live, work, or own property in the
21 Eastlake neighborhood, whose boundaries include the subject property. The housing
22 proposal would directly and adversely affect the lives, livelihoods, and properties of
23 Eastlake's members such as by exacerbating traffic and parking congestion, by creating
population pressures upon local transit, area parks, and other public facilities, and by
producing a scale of development incompatible with the vicinity. Petitioner is aggrieved,

1 adversely affected and prejudiced or likely to be prejudiced by DPD decisions
2 challenged in this Petition.

3 6.2 The interests of Eastlake and its members are among those that DPD was
4 required to consider in rendering its decisions. Among other purposes, the Seattle Land
5 Use Code serves to: maintain a compatible scale of development throughout the City,
6 including the Eastlake neighborhood; minimize traffic congestion; enhance the
7 streetscape and pedestrian environment; allow for efficient use of land without major
8 disruption; and direct development to areas with adequate services and amenities and
9 away from areas lacking adequate services and amenities. SMC 23.02.020.A. DPD's
10 approval of the housing proposal would defeat those purposes because: the approved
11 housing proposal would be out of scale with the surrounding development; it would
12 exacerbate traffic and parking congestion; its lack of parking and loading areas would
13 detract from the streetscape and pedestrian environment; it would produce major
14 disruption; it would tax existing services and facilities; and it fails to conform to the
15 requirements of the city's land use and building codes.

16 6.3 A judgment in favor of Eastlake would eliminate the prejudice caused or
17 likely to be caused by the decisions of DPD as it would result in a ruling that the housing
18 proposal is impermissible within the applicable LR3 zone and as a result the proposal's
19 many adverse impacts would be averted.

20 6.4 Eastlake has exhausted its administrative remedies to the extent required
21 by law by attempting to obtain an administrative determination on the issues raised in
22 this Petition.
23

1 7.3 The application and approval documentation have provided different
2 housing unit counts for the proposal. The Environmental Checklist originally submitted
3 in support of the application described the use as consisting of 115 congregate units
4 and boarding house. In a revised application submitted in December 2013, the applicant
5 described the proposal as including 113 bedrooms and two separate dwelling units.
6 Plan revisions submitted on March 4, 2014 showed approximately 107 separate
7 bedroom units and eight separate dwelling units. Plan revisions submitted on May 5,
8 2014 (after DPD's approval of its Analysis and Decision), identified 113 bedroom units
9 and two separate dwelling units.

10 7.4 On April 17, 2014, DPD issued its Analysis and Decision approving a DNS
11 for a housing proposal described as consisting of 113 bedrooms and two dwelling units.
12 But as described within the plan set dated March 4, 2014, the last revision prior to
13 issuance of the Analysis and Decision, the housing proposal would consist of eight
14 dwelling units (with kitchens), and approximately 107 housing units, each consisting of a
15 bedroom and a bathroom but without kitchen or other food preparation facilities.
16 Apparently intended for use by the separate bedroom units, the housing proposal would
17 provide two kitchens, one located in a first level laundry room with dimensions of
18 approximately ten by fifteen feet, and a second on the fifth floor within a "great room" of
19 approximately 16 feet square. Neither separately nor together would the two kitchens
20 provide facilities capable of meeting the food storage, preparation, service and dining
21 needs of the residents of the bedroom units. The DPD has produced the March 4, 2014
22 revised plans only in electronic format, which are available at DPD's website at
23

1 <http://web6.seattle.gov/dpd/edms/> under Plan SetV4, a copy of which is incorporated by
2 this reference into this pleading as if fully set forth.

3 7.5 On May 1, 2014, Eastlake appealed to the Seattle Hearing Examiner the
4 DNS within the Analysis and Decision and requested of DPD a code interpretation as to
5 whether the housing proposal was permissible within the LR3/RC zone as a form of
6 congregate housing, in particular, requests 1, 2 and 6 of Eastlake's code interpretation
7 request set forth at Appendix B.

8 7.6 On May 2, 2014, DPD declined to issue an interpretation on questions
9 relating to whether the housing proposal was permissible within the applicable zoning,
10 in particular DPD's response to Items 1, 2 and 6 within Appendix C.

11 7.7 On May 5, 2014, subsequent to DPD's Analysis and Decision and
12 subsequent to both Eastlake's appeal of the DNS to the Hearing Examiner and its
13 request for interpretation, the applicant again revised its permit plans for the housing
14 proposal. The May 5, 2014 revised plans represent the housing proposal as consisting
15 of 113 congregate housing units and two dwelling units, for a total of 115 units. The
16 applicant and DPD have produced the May 5, 2014 revised plans only in electronic
17 format which are available at DPD's website at <http://web6.seattle.gov/dpd/edms/> under
18 Plan SetV5; a copy of which is incorporated by this reference into this pleading as if fully
19 set forth. DPD has not amended, revised or re-issued its Analysis and Decision in
20 response to the revised plan set of May 5, 2014.

21 8. STATEMENT OF ERRORS

22 8.1 To the extent that DPD's Analysis and Decision and its refusal to consider
23 whether the housing proposal meets requirements for congregate housing constitute

1 final decisions approving a change of use at the 2820 and 2822 Eastlake Avenue East
2 addresses from a single family structure and an apartment building to a proposal
3 consisting of 113 bedroom units (each with bathrooms but without kitchens or cooking
4 facilities) and two separate dwelling units; these decisions are in error because:

5 8.1.1 The collection of 113 bedroom/bathroom units does not qualify as a
6 congregate residence as evidenced by the sizing of kitchens incapable of serve the
7 needs of residents of 113 bedroom units; the lack of common dining facilities; the lack of
8 common food storage and food preparation facilities; and the lack of other facilities to
9 support congregate residents. The housing proposal is permissible under neither the
10 Seattle Land Use Code nor the Seattle Building Code.

11 8.1.2 The collection of 113 bedroom/bathroom units does not qualify as a
12 congregate residence because each bedroom/bathroom unit is designed to function
13 independently and would constitute a separate household unit.

14 8.1.3 Approval of the housing proposal with two dwelling units and 113 housing
15 units exceeds the allowable density within the applicable LR3/RC zone.

16 8.1.4 By law, DPD may only grant approval of land use proposals that conform
17 to the requirements of the Land Use Code and other applicable laws. SMC 23.76.028.B.

18 8.1.5 DPD's approval of congregate housing use for the sites at 2820 and 2822
19 Eastlake Avenue East is in error because it is contrary to the provisions of the Seattle
20 land use and building codes.

21 9. REQUEST FOR RELIEF

22 Wherefore, Petitioner requests that the Court grant the following relief:
23

