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KING COUNTY
SUPERIOR COURT CLERK
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CASE NUMBER: 15-2-00326-7 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KING COUNTY

DISPLACED TENANTS FOR)	No.
ACCOUNTABILITY AND)	
TRANSPARENCY)	LAND USE PETITION
)	
Petitioner,)	
)	
v.)	
)	
CITY OF SEATTLE, TRIAD CIVIC CENTER)	
LLC,)	
)	
Respondents.)	
)	
)	
)	

PETITIONER Displaced Tenants for Accountability and Transparency hereby submits this Land Use Petition, pursuant to RCW 36.70C, as follows:

LAND USE PETITION

1. Name and Mailing Address of Petitioner:

Displaced Tenants for Accountability and Transparency
% Tenants Union of Washington State
Jonathan Grant
5425 Rainier Ave S Suite B Seattle, WA 98118

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2. Name and Address of Petitioner’s Attorney

Knoll Lowney
Smith & Lowney, P.L.L.C.
2317 E. John St.
Seattle, WA 98112
Telephone: (206) 860-2883
Fax: (206) 860-4187

3. Name and Mailing Address of the Local Jurisdiction Whose Land Use Decision is at Issue

City of Seattle
600 4th Avenue
Seattle, WA 98124

4. Identification of the Decision-Making Body or Officer, Together With a Duplicate Copy of the Decision

4.1 Petitioner appeals the City of Seattle’s improper renewal of Master Use Permit (“MUP”) 3007149 on December 17, 2014. The decision was designated MUP 3018873. A copy of the decision is attached. *Exhibit A.*

5.0 Additional Parties

5.1 The City of Seattle is both the decision maker and the owner of record of the property at issue.

The applicant listed the following as the property owner:

Financial and Administrative Services
700 5th Ave. PO Box 94689
Seattle, WA 98124-4689

Additionally, the permit lists the following as the applicant(s):

Brett Allen
Triad Civic Center LLC
2801 Alaska Way Suit 107
Seattle, WA 98121

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Triad Civic Center LLC
2801 Alaska Way Suit 107
Seattle, WA 98121

The original permit listed the following as “other applicant” and/or financially responsible party:

Sean Canady
1301 1st Ave. # 301
Seattle, WA 98101

SEAN CANADY
GGLO
1301 1ST AVE, #301
SEATTLE, WA 98101

6.0 Statement of Facts

6.1 This Land Use Petition challenges the City of Seattle’s improper renewal of the MUP granted to Triad Civic Center LLC and/or its affiliates (“Triad”). *See Exhibit A.* The MUP involves the Civic Square project at 601 4th Avenue in downtown Seattle.

6.2 MUP 3007149 was “approved for issuance” on November 6, 2009. *Id.* (correctly stating approved for issuance date). Under SMC 23.76.028(C)(1), the MUP was approved for issuance “on the day following expiration of the applicable City of Seattle administrative appeal period.” The City of Seattle approved the MUP on October 22, 2009 and the appeal period expired fourteen days later, on November 5, 2009, setting the “approval for issuance date” on November 6, 2009.

6.3 MUP 3007149 was “issued” approximately two years later, on October 18, 2011, when Triad finally picked up its permit. *Exhibit B. Id.* The applicant and/or its agent signed to acknowledge receiving the permit. *Id.* The MUP *actually* received by Triad correctly listed the MUP’s expiration date of November 6, 2012.

1 6.3 The Seattle Municipal Code establishes that the MUP expired on November 6,
2 2012. Pursuant to Seattle Municipal Code (“SMC”) 23.76.032, the MUP was to expire three
3 years from the date on which the permit was “approved for issuance.”

4 6.4 The permit expired on November 6, 2012 as a matter of law and was
5 thereafter not subject to renewal.
6

7 6.5 Triad is a sophisticated developer with a team of lawyers and permit
8 consultants so cannot claim ignorance of the law. In addition, the City clearly communicates
9 information about MUP expiration and renewals to the development community. *See*
10 Department of Planning and Development (“DPD”) Tip # 201 (“In most cases, the approval
11 expires three years from the date a permit is approved for issuance.”) and Client Assistance
12 Memo 224A (confirming that a request to extend or renew an issued MUP must be submitted
13 prior to the expiration of the MUP permit.).
14

15 6.6 After the MUP expiration date, Triad requested a permit renewal. City
16 officials explained to Triad that the City lacked authority to renew or extend an expired
17 permit. In internal communications, the City confirmed among DPD staff that MUP 3007149
18 was expired and could not be renewed, and that Triad would need to request a new MUP,
19 although it could rely upon much of its previous application material and certain parts of the
20 design review process.
21

22 6.7 On information and belief, Triad never submitted a formal request to renew
23 the permit and the City never analyzed the request for renewal under the applicable legal
24 criteria.
25
26

1 6.8 After the City informed Triad that the expired permit could not be renewed,
2 Triad threatened to sue the City claiming that it had relied upon the City’s website, which
3 Triad contended contained an incorrect permit expiration date. Triad could not have
4 reasonably relied upon an incorrect date on a website given that the law clearly establishes
5 the MUP expiration date and Triad picked up the permit stating the correct expiration date.
6

7 Moreover, the City’s website contains the following disclaimer:

8 Neither the City, or any department, officer, or employee of the City warrants the
9 accuracy, reliability or timeliness of any information published by this system, nor
10 endorses any content, viewpoints, products, or services linked from this system, and
11 shall not be held liable for any losses caused by reliance on the accuracy, reliability or
12 timeliness of such information. Portions of such information may be incorrect or not
13 current. Any person or entity that relies on any information obtained from this system
14 does so at their own risk.¹

13 6.9. Similarly, Triad claims that it relied upon a copy of the permit that contained
14 an incorrect expiration date. That alleged reliance would similarly be unreasonable because
15 the expiration date is established by ordinance, the hard copy of the permit that Triad actually
16 received and signed for contained the correct expiration date, and each permit contains a
17 disclaimer stating that the development permission granted by the permit is “subject to
18 compliance with the Ordinances of the City of Seattle.” See *Exhibits A and B*.
19

20 6.10 In addition, Triad had reason to believe that the permit expiration dates
21 contained in the DPD website and databases can be unreliable and sometimes incorrect.
22 Indeed, Triad reported that its own land use attorney was well aware of this issue and had told
23 Triad that “permit techs at DPD that issue the permits rarely enter the correct date for MUPs;
24

25 _____
26 ¹ <http://www.seattle.gov/pan/privacypol.htm#disclaimer>

1 they revert to whatever date it is being picked up rather than on the true ‘approved for
2 issuance’ date per code, which sets up incorrect expiration date. ... I have talked to [DPD
3 staff] numerous times about this issue over the years...” *Exhibit C*. Such potential mistakes
4 are the reason that the website and permits contain disclaimers, and why Triad long ago
5 engaged a team of permit consultants and lawyers.
6

7 6.11 On December 17, 2014, the City of Seattle illegally renewed the MUP and set
8 a new expiration date of October 29, 2016.

9 6.12 There is no available administrative appeal of this decision. However, due to
10 ambiguities in the Seattle Municipal Code, Petitioner filed a timely appeal with the Seattle
11 Hearing Examiner to allow the Hearing Examiner to confirm the lack of administrative
12 remedies.
13

14 **7.0 Standing**

15 7.1 Petitioner’s members frequently visit the area of the proposed development
16 and intend to do so in the future. They also rely upon the City’s budget, including tenant and
17 homeless services, and transportation services. The proposed project will have negative
18 impacts on these members’ enjoyment of the area, disposes of public land for purposes that
19 these members do not support, does not provide adequate protection for the public, and is
20 based upon out-of-date environmental review and decision making.
21

22 7.2 Petitioner’s members access the Third Avenue Bus Tunnel through the project
23 site, drive, and use buses in the area. The project will impact their access to the Bus Tunnel.
24 In addition, they are concerned that the lack of updated environmental and transportation
25 analysis will negatively impact their ability to travel through the area and their enjoyment of
26

1 this area of downtown. They have used and enjoyed the stairway leading to City Hall which
2 will be shaded by the proposed project.

3 7.3 The City’s actions prejudice the interest of Petitioner’s members and the
4 public by undermining transparency and accountability. The City has engaged the applicant
5 in a complicated and controversial public private partnership, which transfers valuable
6 development rights to a private entity. The City and applicant entered into this property
7 transaction in February, 2008. The public’s value of this transaction may have significantly
8 changed in the last six years. By illegally renewing an expired permit, the City has given
9 special privileges to its business partner, exempting Triad from the requirement to reapply for
10 its MUP and update environmental documents. Moreover, if the MUP had expired, it may
11 have resulted in the termination of the property agreement between the City and Triad, which
12 could have resulted in greater public benefit from the property. Indeed, in a letter dated
13 August 7, 2014, the City’s Department of Financial and Administrative Services indicated the
14 City’s interest in the renewal of the MUP, telling Triad that “The City is extremely concerned
15 that the MUP will expire before the end of the current December 31, 2014, term of the
16 [Purchase and Sale Agreement].”
17
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20 7.4 Thus, the illegal permit renewal has significant impacts on public resources
21 and public property.

22 **8.0 Separate and Concise Statement of Each Error Alleged to Have Been**
23 **Committed and Concise Statement of the Facts Upon Which the**
24 **Petitioner Relies to Sustain the Statement of Error**

25 8.1 The facts alleged in the above sections are hereby incorporated by reference as
26 if fully set forth herein.

1 1 An Order requiring City of Seattle to file with this Court a certified copy of
2 the administrative record for judicial review, to the extent possible;

3 2 An Order allowing supplementation of the record with evidence of material facts,
4 pursuant to RCW 36.70C.120(3), and allowing appropriate discovery, since the City held no
5 open record hearing and created no administrative record on the permit renewal;
6

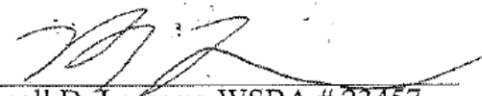
7 3 An Order declaring that MUP 3007149 expired and reversing the approval of
8 the Master Use Permit renewal (MUP 3018873).

9 4 An award of allowable costs and attorney fees, including but not limited to the
10 equitable apportionment of the cost of preparing the record for review pursuant to RCW
11 36.70C.110(4); and
12

13 5 Other such relief as the Court finds just and equitable.

14 Respectfully submitted this 6th day of January, 2015.

15 SMITH & LOWNEY, P.L.L.C.

16
17 By: 
18 Knoll D. Lowney, WSBA # 23457
19 Attorneys for Petitioner

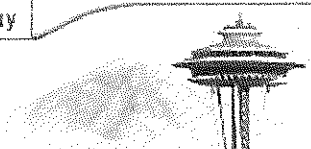
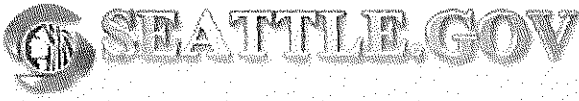
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DECLARATION OF SERVICE

I, Jessie Sherwood, hereby certify under penalty of perjury under the laws of the state of Washington that on this 6th day of January, 2015, I caused this LAND USE PETITION to be personally served on the City of Seattle and on all other parties described herein by first class mail, pursuant to RCW 36.70C.040, CR 4, and RCW 4.28.080.

Dated this 6th day of January, 2015.

Jessie Sherwood
Jessie Sherwood



SEARCH:

Department of Planning and Development

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Building a Dynamic and Sustainable Seattle

Diane Sugimura, Director

Permit & Complaint Status

Project # 3018873

[Find Another Project](#) [Printable Version](#)

Address	601 4th Ave	Permit Number	
Location	3/26/08 MHS CHANGED ADDRESS FROM 600 3RD AVE TO 601 4TH AVE	Permit Status	Submittal Closed
Records Filed At	601 4th Ave	Application Date	Dec 16, 2014
Application Type	POST DECISION SUBMITTAL	Issue Date	
Work Type	FULL REVIEW (COMPLEX)	Expiration Date	
Category	COMMERCIAL	Finalized Date	Dec 17, 2014
King Co. Assessor's #		Other Applicant	BRETT ALLEN TRIAD CIVIC CENTER LLC 2801 ALASKAN WAY SUITE 107 SEATTLE, WASHINGTON 98121
Zone/Overlays and ECA	CITY, DMC-B, AIRPRT, ARTERL, ARTERL, LNDMRK, OVERDF, SP STR, URBNV, VW 100	Contractor	
Legal Description	BLK 32, C.D. BORENS, TGW ALLEY IN SD BLK VAC BY COUNTY COMMISSION ON 5/2/1864, EXC NE 9' & SW 9' OF SD BLK COND UNDER CO 13074 & CO 14345 FOR ST	Permit Remarks	
Description of Work	Renewal of 3007149:	Related Bldg Permits	
Related Permits	3007149		
Related Cases			

[Details](#) [Inspections](#) [Reviews](#) [Land Use](#) [Fees & Receipts](#) [Occupancy & Uses](#) [Contacts](#)

Review Cycles

Review Type	Cycle #	Status	Assignment Date	Complete Date	Assigned To
LAND USE	1	Waived			
ZONING	1	Approved	Oct 12, 2014	Dec 15, 2014	Oiye, A.

Target Date for Completion of the Current Review Cycle: 1/13/2015

Definition of Terms

- Incomplete** - Either no one has been assigned to do this review or the assigned reviewer hasn't had a chance to complete the review yet. At this time, it is not determined if there will be corrections.
- Conditional Approval** - The reviewer has approved the review cycle, but certain conditions must be met before a status of 'Approved' can be reached.

Permit Number:
3007149



CITY OF SEATTLE

Land Use Permit

Department of Planning
and Development
700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8600

APN #:
094200-0855

Site Address: 601 4TH AVE, SEATTLE, WA

Building ID(s): NONE

Location: 3/26/08 MHS CHANGED ADDRESS FROM 600 3RD AVE TO 601 4TH AVE

Legal Description: BLK 32, C.D. BOREN'S, TGW ALLEY IN SD BLK VAC BY COUNTY COMMISSION ON
5/2/1864, EXC NE 9' & SW 9' OF SD BLK COND UNDER CO 13074 & CO 14345 FOR ST

Records Filed At: 601 4TH AVE

OWNER

FINANCIALLY RESPONSIBLE PARTY

SEAN CANADY
1301 1ST AVE, #301
SEATTLE, WA 98101
Ph: (206) 902-5502 Fax: (206) 467-0627

Primary Applicant

Application Date: 04/01/2008
Approved for Issuance: 11/06/2009
Issued Date: 10/18/2011
Expiration Date: 10/29/2016
Fees Paid: \$115,395.00
As of Print Date: 12/17/2014

Description of Project: Land Use Application to allow a 43-story building containing 593,000 sq. ft. of office, 12,000 sq. ft. of retail with 136 residential units above and a 3-story building containing 19,000 sq. ft. of retail/restaurant. Project includes 30,000 sq. ft. of open space over five levels of below-grade parking for 600 vehicles, 114,000 cu. yds. of grading and new access to the existing Metro Bus Tunnel on 3rd Avenue. Addendum to the Downtown Height & Density Changes and Civic Center Master Plan Environmental Impact Statement and SEPA document for Downtown Zoning Amendment has been submitted.

Permit Remarks: New expiration date is 10/29/2016.

Use: Y
TRAO Applies: N
Land Use Conditions: Y
Decision Type: II

Approved Uses	Location
Office	
General Retail	
Live-Work Unit	

Zoning/Overlays:
Downtown Mixed Comm-340/290-400
Downtown Fire District
Urban Village Overlay
Arterial Within 100ft
Additional Information on File

Land Use Component Information

Component Type	Component Detail	Outcome
DESIGN REVIEW WITH EDG	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW WITH EDG	BUILDING MODULATION	GRANTED
DESIGN REVIEW WITH EDG	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW WITH EDG	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW WITH EDG	OTHER DEVELOPMENT STANDARDS	GRANTED
Additional Information on File		

A/P #	Related Cases/Permits	Project Contacts	Name	Phone
6443535	Construction and Development Permit	Project Facilitator	BRUCE PHILLIP RIPS	(206) 615-1392
6134839	Construction and Development Permit	Final Reviewer	BRUCE RIPS	(206) 615-1392
6134838	Construction and Development Permit	Zoning Reviewer	LORI SWALLOW	(206) 684-5627
3018873	Post Decision Submittal			

Applicant Signature:

Date:

This Land Use Permit authorizes the use of the property and/or work described above. Permission is hereby given to develop the site address shown, according to the conditions hereon and according to the specification pertaining thereto, subject to compliance with the Ordinances of the City of Seattle.

Subsequent Demolition, Construction, Site Work, or Mechanical work may require additional permits and may not begin without the appropriate approval. Additional information may be obtained from the Department of Planning and Development at (206) 684-8169.

Permit Number:
3007149



CITY OF SEATTLE

Land Use Permit

Department of Planning
and Development
700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8600

APN #:
094200-0855

Site Address: 601 4TH AVE, SEATTLE, WA

Building ID(s): NONE

Location: 3/26/08 MHS CHANGED ADDRESS FROM 600 3RD AVE TO 601 4TH AVE

Legal Description: BLK 32, C.D. BOREN'S, TGW ALLEY IN SD BLK VAC BY COUNTY COMMISSION ON 5/2/1864, EXC NE 9' & SW 9' OF SD BLK COND UNDER CO 13074 & CO 14345 FOR ST

Records Filed At: 601 4TH AVE

OWNER	FINANCIALLY RESPONSIBLE PARTY SEAN CANADY 1301 1ST AVE, #301 SEATTLE, WA 98101 Ph: (206) 902-5502 Fax: (206) 467-0627	Application Date: 04/01/2008
	Primary Applicant	Issued Date: 10/18/2011
		Expiration Date: 11/06/2012
		Fees Paid: \$115,395.00
		As of Print Date: 10/18/2011

Description of Project: Land Use Application to allow a 43-story building containing 593,000 sq. ft. of office, 12,000 sq. ft. of retail with 136 residential units above and a 3-story building containing 19,000 sq. ft. of retail/restaurant. Project includes 30,000 sq. ft. of open space over five levels of below-grade parking for 600 vehicles, 114,000 cu. yds. of grading and new access to the existing Metro Bus Tunnel on 3rd Avenue. Addendum to the Downtown Height & Density Changes and Civic Center Master Plan Environmental Impact Statement and SEPA document for Downtown Zoning Amendment has been submitted.

Permit Remarks: assign zoning to Lori S.

Use: Y
TRAO Applies: N
Land Use Conditions: Y
Decision Type: II

Approved Uses	Location
Office	
General Retail	
Live-Work Unit	

Zoning/Overlays:
Downtown Mixed Comm-340/290-400
Downtown Fire District
Urban Village Overlay
Arterial Within 100ft
Additional Information on File

Land Use Component Information

Component Type	Component Detail	Outcome
DESIGN REVIEW	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW	BUILDING MODULATION	GRANTED
DESIGN REVIEW	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW	OTHER DEVELOPMENT STANDARDS	GRANTED
DESIGN REVIEW	OTHER DEVELOPMENT STANDARDS	GRANTED
Additional Information on File		

A/P #	Related Cases/Permits	Project Contacts	Name	Phone
6134838	Construction and Development Permit	Project Facilitator	BRUCE PHILLIP RIPS	(206) 615-1392
6134839	Construction and Development Permit	Final Reviewer	BRUCE RIPS	(206) 615-1392
		Zoning Reviewer	LORI SWALLOW	(206) 684-5627

Applicant Signature: *Miael De Cruz*

Date: 10/18/2011

This Land Use Permit authorizes the use of the property and/or work described above. Permission is hereby given to develop the site address shown, according to the conditions hereon and according to the specification pertaining thereto, subject to compliance with the Ordinances of the City of Seattle.

Subsequent Demolition, Construction, Site Work, or Mechanical work may require additional permits and may not begin without the appropriate approval. Additional information may be obtained from the Department of Planning and Development at (206) 684-8169.

From: Brett Allen [REDACTED]
Sent: Wednesday, July 30, 2014 11:40 AM
To: Potter, Chris; Podesta, Fred; Hamilton, Hillary
Cc: Fred Grimm
Subject: RE: Civic Square MUP expiration

Chris –

Thanks for continuing to push this issue. Triad, the architects and everyone else involved in the project were basing our view of the situation upon the dates given to us by DPD (on both the physical permit as well as the "Permit Status" web portal). Imagine my surprise when I called Sue Putnam and was told that our MUP had actually expired in November, 2012(!?) I'm not sure how we would have learned of this if you hadn't pushed the issue (since the November, 2012 date is not shown on any of our project information from DPD).

The particularly frustrating part of all of this is that if DPD hadn't published the erroneous expiration date, we would have renewed the permit in November, 2012 and received a 3 year extension to November, 2015. Unfortunately, the 3 year extension program ended 12/31/12 and the maximum extension allowed today is 2 years (although again, our permit has technically been expired for the past year-and-a-half).

After the conversation with Sue, I contacted our land-use attorney immediately. In case my summary above was unclear, here is her summary of the situation:

"Unfortunately, for whatever reason, the permit techs at DPD that issue the permits rarely enter the correct date for MUPs; they revert to whatever date it is being picked up rather than on the true 'approved for issuance' date per code, which sets up incorrect expiration date. Luckily for most clients, either the building permit is issued or the discrepancy is otherwise caught before the MUP expires, but not in the present case. Here, the MUP was approved for issuance on 11/6/09, but not picked up until 10/18/11, two years later, due to recession (a fate for many MUPs during this time period). So, unbeknownst to the client, they had already exhausted two years of

the three year MUP life when they picked up the permit. Going off of the erroneous three year expiration date on the permit, which they had no reason to doubt, they naturally missed the true three year MUP expiration.

I have talked to Sue Putnam numerous times about this issue over the years, but nothing is ever done about it. I left her a voice mail today saying 'here's another one – what can be done?' I'll think about any creative solutions. Unfortunately I don't see anything in code that would allow it. I know that they allow building permits that have expired to 'reestablish' subject to a fee; maybe something like that here. Alternatively, maybe they could allow the 6 year MUP term retroactively, despite the option having been removed from Code by ordinance. May have to go to someone more senior."

The one caveat I'd add to her summary is that the "approved for issuance" date itself is somewhat bogus. While the appeal period on the MUP Decision had expired on 11/06/09 (the definition of "approved for issuance"), the decision document called for additional design work (and review and approval from the planner) before the MUP was actually "approved for issuance". So it's not as if we sat around for two years doing nothing (or delayed due to the recession) while the permit could have been picked up – we were going around and around with the planner on an acceptable redesign of the corner of 4th & James (as was a condition of the MUP Decision).

Our attorney is contacting DPD today to find an acceptable resolution to the situation. We feel strongly that it is both fair and reasonable that DPD correct the mistake by allowing us to extend the MUP from its original expiration using the rules that were in place at that time. This would mean that the new MUP expiration would be 11/6/15. The November, 2015 date is obviously different from what we have been using in our planning, but we're confident that we can make it work (and puts that much more pressure on all of us to get the construction underway as soon as possible). If DPD is unwilling to consider this solution (or something else that may be acceptable), then the furthest that we can extend the current MUP is to 11/6/14, in which case we'll all have a major challenge that we'll need to discuss.

I'll let you know as soon as I hear anything from our attorney. In the meantime, let me know if you have any questions or would like additional details.

Thanks,

Brett