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BEFORE THE CITY COUNCIL
FOR THE CITY OF SEATTLE

In the Matter of the Application of **BOB MCCULLOUGH** for a Multi-Family Tax Exemption	**Applicant's Appeal of Office of Housing's Denial of MFTE Application**

INTRODUCTION

On May 9, 2013, Bob McCullough applied for a building permit to construct a congregate residence consisting of 40 sleeping rooms that are intended to be rented to 40 individuals ("Project"). The Project site is located at 4742 20th Avenue Northeast, in the University District of Seattle. The Project replaced a dilapidated structure that for years had housed substandard student boarding rooms.

The building permit application submitted to DPD by Mr. McCullough's architect stated that the congregate residence would consist of "20 dwelling units." The Project's architect submitted the applications with this number of dwelling units due to DPD Director's Rule 12-2012 that states: "For residential uses not readily described as a discrete number of units, including nursing homes and congregate residences, the exemption will be based on a comparison of sleeping units (functionally equivalent to bedrooms) to dwelling units. Each

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bedroom will be counted as on-half of one dwelling unit in these cases." Exhibit A. At the time of submittal, DPD did not question the number of dwelling units stated in the building permit application.

On August 23, 2013, Mr. McCullough submitted an application to the Department of Housing for a Multifamily Tax Exemption for the Project. The application stated that the application was for a "40-unit apartment building," and the number of rental dwelling units proposed was 40 units. Exhibit B. The Office of Housing does not define "dwelling unit" in any applicable code or Office of Housing publication. Mr. McCullough paid the $3,000 application fee to the Office of Housing, and supplied all of the necessary documents as attachments to the application.

Also on August 23, 2013, DPD issued a building permit for the Project.[1] DPD issued the building permit for 20 dwelling units. Exhibit C. Project construction started on September 5, 2013.

On September 3, 2013, Mike Kent of the Office of Housing emailed Mr. McCullough asking him questions about the number of units proposed in the Project versus the MFTE application. Exhibit D. Mr. Kent referenced the Department of Housing's Director's Rule 1-2013 which states that "the number and size of dwelling units verified by the Owner in the application for property tax exemption for Multifamily Housing shall be identical to the number and size of dwelling units contained in the Owner's application to the DPD for a building permit for the multifamily housing, a copy of which shall be provided to OH…an application for tax exemption containing numbers and sizes of dwelling units that do not match the building permit

[1] SMC 5.73.040.D requires that an MFTE application be submitted prior to the first building permit under Chapter 22 (the building code) is issued.

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application shall be denied." Exhibit E. Mr. McCullough did not receive notice that his application was complete at any time during the application process.

On November 25, 2013, Cheryl Mosteller from DPD emailed Mr. McCullough's architect and stated that DPD had "reprinted" the building permit for the Project. The building permit was reprinted to reflect that DPD considered congregate residences to be only one dwelling unit. Exhibit F. Mr. Kent, and Mr. Kent's boss, Miriam Roskin, were copied on the email from Ms. Mosteller. DPD and the Office of Housing clearly coordinated to discuss this Project.

Also on November 25, 2013, Mr. Kent forwarded Ms. Mosteller's email to Mr. McCullough stating that because the Project was considered to be one unit, the Project did not qualify for the MFTE program. Exhibit G. Mr. McCullough's attorney called Mr. Kent at this time. Among other things, Mr. Kent stated that a reason for denial of the application was because the Office of Housing must act on an application within 90 days. See SMC 5.3.060.

On December 12, 2013, Mr. McCullough's attorney sent an email to Andy McKim of DPD questioning the legality of DPD's "reprinting" of a building permit, citing to *Chelan County v. Nykreim,* 146 Wn.2d 904 (2002). Exhibit H. Mr. McKim responded to a second request on December 18, 2013 for additional information that DPD would be "discussing this with Law next Monday." *Id.*

On December 12, 2013, Mr. McCullough's attorney received a letter denying the Project's MFTE application, for two reasons: first, the number of dwelling units on the MFTE application did not match the building permit application; and second, the Project was ineligible

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for MFTE because DPD "reprinted" the building permit to state that the building was only one unit.[2] Exhibit I.

On December 16, 2013, Mr. McCullough submitted a revised application for MFTE to the Office of Housing revising the number of dwelling units from 40 to 20. Exhibit J.

On December 21, 2013, not having heard from DPD regarding the "reprinting" of the building permit, Mr. McCullough's attorney filed a request for administrative review of DPD's decision to reprint the building permit. Exhibit K. The request for review alleges that DPD's action is inconsistent with City Codes and State Law, and is inconsistent with several rulings of the Washington State Supreme Court. As of the date of this filing, no formal response from DPD regarding the request for administrative review has been received.

On December 23, 2013, Mr. Kent forwarded the denial of the MFTE application via email to Mr. McCullough, as it was returned on the Office of Housing as undeliverable. Exhibit L.

The denial of the MFTE application will cost the Project between $130,000 and $300,000 in lost property tax exemption, and $3000 in application fee. In addition, the denial of the MFTE application results in fewer units of housing affordable to people with incomes of 60-80%.

SPECIFIC OBJECTIONS

SMC 5.73.060.F states that an Owner may appeal the Director's denial of an MFTE application by filing an appeal to the City Council with the City Clerk within 30 days of the receipt of the denial. The appeal before the City Council will be based on the record before the Director, and the Director's decision will be upheld unless the Owner can show that there is no

[2] The letter is dated December 10, 2013, but was not received by Mr. McCullough's attorney until December 10, 2013.

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substantial evidence in the record to support the Director's decision. The appellant's specific objections follow:

1. **The project application was not complete and therefore the Office of Housing's denial violates application procedures stated in SMC 5.73.050.**

   SMC 5.73.050 outlines the specific procedure for MFTE application. SMC 5.73.050.C requires that the City:

   > Notify the Owner within 28 days of the application being filed if the Director determines that an application is not complete and shall identify what additional information is required before the application will be complete. Within 28 days of receiving additional information, the Director shall notify the Owner in writing if the Director determines that the application is still not complete, and what additional information is necessary. An application shall be deemed to be complete if the Director does not notify the Owner in writing by the deadlines in this section that the application is incomplete; however, a determination of completeness does not preclude the Director from requiring additional information during the review process if more information is needed to evaluate the application according to the criteria in the chapter.

The MFTE application in this case was never deemed to be complete by the Office of Housing. On September 3, 2013 Mr. Kent asked for additional information related to the number of units. Once the Office of Housing notified Mr. McCullough that the application was incomplete, and Mr. Kent needed additional information to complete its review, SMC 5.73.050 requires that the Office of Housing affirmatively give notice once it determines that the application is complete. The Office of Housing did not do this, and therefore its denial was unwarranted, premature, and in violation of MFTE procedures contained in SMC 5.73.050.

It makes sense that the MFTE application should remain pending and incomplete: as stated above, decisions related to how dwelling units are determined and whether DPD could legally "reprint" a permit are pending. Administrative appeals related to this issue also remain pending. Mr. McCullough resubmitted his MFTE application on December 16, 2013, to cure the

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dwelling unit discrepancy. Thus, a determination of completeness would have been premature and unwarranted—the Office of Housing simply did not have the information required to make a final determination regarding this matter. The code requires that the Office of Housing issue a Determination of Completeness if the Office has asked for additional information. The Office of Housing did not do this, and therefore its denial of the MFTE application violates SMC 5.73.050.

2. **The Office of Housing lacks the power to deny an MFTE application based on Director's Rule 1-2013.**

The Office of Housing cited to Director's Rule 1-2013 as one of the reasons the MFTE application was denied. The Office of Housing may not rely upon a Director's Rule to deny an application.

Chapter 5.73 SMC very clearly outlines the requirements for MFTE eligibility and denial or approval of application. Although Chapter 5.73 SMC does not cite to a Director's Rule as a criterion for eligibility or approval, the Municipal Code does give the Office of Housing the general ability to create a Director's Rule:

> SMC 3.14.740 In order to carry out office functions, the Director of Housing shall have the power to: G. Promulgate and amend, in accordance with the City Administrative Code to the extend applicable, rules, regulations, and polices to carry out Office of Housing activities, provided that no such rule, regulation or policy shall confer any rights to entitlement upon any person, entity, class or group, nor undertake any legal duty to any person, entity, class or group.

Director's Rule 1-2013, and the Office of Housing's reliance upon this rule to deny the application, clearly is in violation of SMC 3.14.740. The Director's Rule gives the Office of Housing the authority to deny an MFTE application for the number of dwelling units listed on a building permit not matching the number of dwelling units on an MFTE permit. *See* Exhibit E. The rule adds additional application approval or disapproval criteria to a process and criteria not

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mentioned in Chapter 5.73 SMC. Thus, the Director's Rule confers rights and duties, in violation of SMC 3.14.740. The Office of Housing must base its approval or denial of the application upon the criteria stated in Chapter 5.73 SMC alone; reliance on the Director's Rule violates SMC 3.14.740 and is an illegal delegation of legislative authority, as the legislative body has already spoken regarding the application approval criteria in SMC 5.73.060.

RELIEF REQUESTED

The Appellant respectfully asks the City Council for leave to submit a memorandum to set forth the key facts contained in the record and to present argument as to the key legal issues pertaining to the appeal. The Appellant asks the Council to identify a date by which the memorandum should be submitted, as well as a date of hearing.

As to the merits, the Appellant respectfully asks the City Council to overturn the Office of Housing's denial of the Project's MFTE permit. Substantial evidence in the record before the Office of Housing, and before the City Council, shows that the denial was premature, the Office of Housing did not follow required procedures related to a complete application, and the denial was based upon a Director's Rule that violates SMC 3.14.740 and is an illegal delegation of legislative powers.

Dated this 10th day of January, 2014.

Respectfully submitted,

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EXHIBIT A

DPD	Director's Rule 12-2012	
Applicant: City of Seattle Department of Planning and Development	**Page** 1 of 14	**Supersedes:** DR 17-2008
	Publication: 12/10/2012	**Effective:** 1/14/2013
Subject: State Environmental Policy Act (SEPA) Exemptions From Environmental Review Requirements When Establishing, Changing or Expanding A Use	**Code and Section Reference:** SEPA Sections 25.05.800 and 25.05.908	
	Type of Rule: Code Interpretation	
	Ordinance Authority: SMC 3.06.040	
Index: City of Seattle State Environmental Policy Act (SEPA) Ordinance	**Approved** **Date** (Signature on file) 1/9/2013 **Diane M. Sugimura, Director, DPD**	

BACKGROUND:

Compliance with the State Environmental Policy Act (SEPA), Revised Code of Washington Chapter 43.21C, and the City's SEPA Ordinance, Seattle Municipal Code Chapter 25.05, is required when establishing a new use or changing or expanding an existing use. State SEPA regulations provide certain standards for "categorical exemption" of certain types of action from compliance with SEPA's procedural requirements related to environmental review, and Seattle's SEPA Ordinance provides more detail on how categorical exemptions apply in Seattle, in areas where the state regulations are flexible. The purpose of this Director's Rule is to provide further interpretation of the categorical exemptions associated with establishing a new use or changing or expanding an existing use. In other words, this rule helps determine when SEPA environmental review is required and when it is not.

Tables A and B for Section 25.05.800, showing the exemption levels for residential and non-residential uses, are referenced in this Rule as Table A.

TABLE A
SEPA Environmental Review Exemption Levels for Establishing a New Use with New Construction (SMC 25.05.800)

	Residential Uses		
	Number of Exempt Dwelling Units		
Zone	**Outside of Urban Centers and Urban Villages Containing a Station Area Overlay District**	**Within Urban Centers, or Urban Villages Containing a Station Area Overlay District**	**Within Urban Centers, or Urban Villages Containing a Station Area Overlay District, if Growth Targets Have Been Exceeded**
SF, RSL	4	4	4
LR1	4	200(1)	20
LR2	6	200(1)	20
LR3	8	200(1)	20
NC1, NC2, NC3, C1, C2	4	200(1)	20
MR, HR, SM	20	200(1)	20
Downtown zones	Not Applicable	250(1)	20
Industrial zones	4	4	4

Notes: SAOD = Station Area Overlay District. Urban centers and urban villages are identified in the Seattle Comprehensive Plan.
1) Pursuant to RCW 43.21C.229, new residential development or the residential portion of new mixed-use development located in an urban center, or in an urban village that contains a SAOD, is categorically exempt from SEPA, unless the Department has determined that residential growth within the urban center or urban village has exceeded exemption limits for the center or village that the Department has established pursuant to subsection 25.05.800.A.1.i. **See Director's Rule 9-2012** (or successor rule). For purposes of this distinction, a "mixed use development" means a development having two or more principal uses, one of which is a residential use comprising 50 percent or more of the gross floor area.

The presence of environmentally critical areas and lands covered by water may also affect which exemption level applies. See Sections I.C, II.F, and III.C of this Rule for new uses, changes-of-use, and expansions of uses, respectively. Also, see Section I.E regarding counting residential units in uses such as nursing homes and congregate residences.

Table A (continued)
SEPA Environmental Review Exemption Levels for Establishing a New Use with New Construction (SMC 25.05.800)

Zone	Non-Residential Uses		
	Exempt Area of Use (square feet of gross floor area)		
	Outside of Urban Centers and Urban Villages Containing a Station Area Overlay District	Within Urban Centers, or Urban Villages Containing a Station Area Overlay District	Within Urban Centers, or Urban Villages Containing a Station Area Overlay District, if Growth Targets Have Been Exceeded
SF, RSL, LR1	4,000	4,000	4,000
LR2, LR3	4,000	12,000(1) or 30,000	12,000
MR, HR, NC1, NC2, NC3	4,000	12,000(1) or 30,000	12,000
C1, C2, SM zones	12,000	12,000(1) or 30,000	12,000
Industrial zones	12,000	12,000	12,000
Downtown zones	Not Applicable	12,000(1) or 30,000	12,000

Notes: SAOD = Station Area Overlay District. Urban centers and urban villages are identified in the Seattle Comprehensive Plan.
1) New nonresidential development that is not part of a mixed-use development and that does not exceed 12,000 square feet is categorically exempt from SEPA. Pursuant to RCW 43.21C.229, new non-residential development that does not exceed 30,000 square feet and that is part of a mixed-use development located in an urban center, or in an urban village that contains a SAOD, is categorically exempt from SEPA, unless the Department has determined that employment growth within the urban center or urban village has exceeded exemption limits for the center or village that the Department has established pursuant to subsection 25.05.800.A.1.i. **See Director's Rule 9-2012** (or successor rule).

See Sections I.C, II.F, and III.C of this Rule for more information on how these exemption levels relate to environmentally critical areas and lands covered by water.

RULE:
This Rule provides information on SEPA environmental review exemptions of the following types of actions:

I. Establishing a New Use with New Construction
II. Change of Use in an Existing Structure
III. Expansion of an Existing Use or Structure
IV. Other

Section I. Exemptions for Establishing a New Use with New Construction

A. *Exemption levels for new uses shown in Table A.* Table A summarizes the highest levels of proposed development that are categorically exempt from SEPA environmental

review when a new use is established as the result of the construction of a new building or structure, or as the result of certain new uses of outdoor areas. These are also referred to as the "SEPA thresholds" because above these threshold levels SEPA environmental review will be required.[1] Other text in Section I provides further details, including thresholds for parking use in Section I.B. Also, see **Director's Rule 9-2012** for more information on Urban Centers, Urban Villages with light rail station areas, and their status with respect to growth monitoring and the higher "infill development" threshold levels. For purposes related to these thresholds, the term "infill development" refers to single-purpose residential development, or mixed-use development that contains residential use in at least 50% of its gross floor area, and one or more legal non-residential uses, when located in an Urban Center, or an Urban Village that contains a Station Area Overlay District.

B. *Parking.* In all zones, construction or addition of parking spaces up to the threshold level of 40 parking spaces is exempt from SEPA review.[2] Larger amounts of parking are exempted when accessory to "infill development" in an Urban Center, or Urban Village that contains a Station Area Overlay District. Also see other rules on thresholds for expansion of parking in Section II.D and III.E (pages 9 and 11) in this Rule.

Parking thresholds are evaluated differently for uses, such as the following, that entail the storage and parking of automobile, bus and truck vehicles as an intrinsic element of the use:

- Towing service
- Major vehicle repair
- Sales and rental of motorized vehicles
- Outdoor parking areas for two or more fleet vehicles of more than 10,000 pounds gross vehicle weight

For such uses, thresholds of SEPA review will be based on square footage of the use, including outdoor lot area in active use, rather than the number of parking spaces.

C. *Environmentally Critical Areas.* In Environmentally Critical Areas, lower thresholds for environmental review of non-residential uses apply, and vary depending on, among other factors, the environmental features of the site. The exemptions in Table A do not apply when uses are in certain Environmentally Critical Areas as specified in SMC Section 25.05.908.A (landslide-prone areas, steep slopes, riparian corridors, wetlands, and fish and wildlife habitat conservation areas), with the following exception: Establishing one single-family dwelling, when under 9,000 square feet of development coverage, is exempt from SEPA. For this purpose, "development coverage" means all disturbed land within a site that is planned for development or redevelopment. Newly disturbed areas within the abutting right-of-way, when associated with a development proposal are counted towards the proposal's total development coverage. Also see

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[1] Other criteria in this rule, addressing situations such as proposed changes in land use and expansions of existing uses, may also lead to a determination that SEPA environmental review is required.

[2] SMC 25.05.800 sets exempt levels for a parking lot designed for 40 "automobiles." For the purposes of this Rule, DPD considers "automobiles" to include other vehicles to be consistent with the Land Use Code definition of a parking area, which is an area "for the parking of vehicles."

SMC Chapter 25.09, Regulations for Environmentally Critical Areas. If a site is determined to be fully exempt from Environmentally Critical Areas review, then non-Environmentally Critical Areas thresholds apply.

Lands covered by water. On lands covered by water, any new construction, regardless of the number of units, gross floor area, or number of parking spaces proposed is subject to environmental review. *See* SMC 25.05.908 and Chapter 25.09, Regulations for Environmentally Critical Areas.

D. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, residential uses will be evaluated according to number of dwelling units, and non-residential uses will be evaluated according to square footage of gross floor area in the determination of exemption from environmental review. For example, if a development proposal in an NC3 zone **outside** an Urban Center and outside an Urban Village containing a Station Area Overlay District will contain 3,800 square feet of non-residential area and up to four dwelling units it will be exempt from SEPA review, even though the total floor area of all uses in the development proposal exceeds 4,000 square feet. Similarly, on a site in a Seattle Mixed (SM) zone **within** an Urban Center, or within an Urban Village with a Station Area Overlay District, a development proposal containing 29,900 square feet of non-residential area and up to 200 dwelling units (or 250 units in Downtown) may be exempt from SEPA review. Please note:

- floor area associated with residential uses is not counted as part of non-residential uses' gross floor area; and
- the total combined non-residential gross floor area in a development proposal is the relevant measure, not floor area per individual business or any other such division of the non-residential gross floor area.

E. *Determining total number of units.* The exemption is based on the total number of units on a development site or project, not on the number of units per structure. For residential uses not readily described as a discrete number of units, including nursing homes and congregate residences, the exemption will be based on a comparison of sleeping units (functionally equivalent to bedrooms) to dwelling units. Each bedroom will be counted as one-half of one dwelling unit in these cases.

F. Non-residential thresholds for "live-work" uses. Live-work uses will be evaluated subject to the thresholds for non-residential uses.

G. *Series of exempt structures or actions.* Pursuant to SMC 25.05.305, a series of exempt structures, or a series of exempt actions (i.e., approvals), may require environmental review if they are physically or functionally related to each other and together may have a probable significant adverse environmental impact, or if they are proposals or a series of actions that are related to each other closely enough to be considered a single course of action. This will be determined on a case-by-case basis by the Director.

H. *Accessory uses.* An accessory use (other than parking) is considered part of the principal use, so the establishment of an accessory use in floor area that is already occupied by the principal use is exempt.

I. *Area of use.* For uses located in buildings, "area of use" shall mean gross floor area. For uses located outdoors, "area of use" shall mean the area devoted to that use. Examples of such outdoor uses include, but are not limited to, the following:

- Outdoor storage
- Outdoor sales areas
- Outdoor seating for restaurants, if outdoor seating area exceeds 750 square feet
- Outdoor sports and recreational facilities
- Salvage yards
- Towing company impound lots
- Gas station canopies
- Car washes

For public parks, the "area of use" shall include gross floor area of structures together with outdoor areas improved for active recreational uses, such as athletic fields.

Section II. Exemptions for Change of Use in an Existing Structure

A. A proposal to change a use within an existing building requires SEPA review, regardless of the actual area being changed, when the change results in a building that, if built new, would have required SEPA review under Section I of this Rule.

B. *Residential Uses*

1. SEPA review is required for proposals involving residential uses if a change of use:
   - adds or eliminates (e.g., by remodel or demolition) more than the exempt number of dwelling units for the zone (based on Section I, Table A of this Rule), or
   - increases or decreases the number of dwelling units by more than 50 percent (if the total unit count is already over the exempt level for the zone), or
   - increases the number of dwelling units such that the resulting total exceeds the exemption level for the first time (refer to Table A and Section II.A above), or
   - increases the number of dwelling units at all if the site is in an Environmentally Critical Area.

C. *Non-Residential Uses*

1. For the purpose of these standards, actively used outdoor areas, as described in Section I.I above ("Area of Use"), shall be regulated in the same manner as floor area in a building.

2. Except as provided in Paragraph 3 below, there is a "change of use" subject to this Section (Section II) of the Rule, if:

a. A new use is proposed to be established in an existing building (or actively used outdoor area) where the use does not now exist; OR

b. An increase is proposed in the area occupied by an existing use, replacing a different use.

3. Non-residential land uses are sorted into four categories, based on their intensity, in Table B. For the purposes of this rule, conversion of existing floor area from one use to another in a different category under Table B shall be considered a "change of use," and shall require SEPA review, except in industrial zones. In industrial zones, a change of use of existing floor area to a use in an adjacent category (for example, a change from a use in Category 3 to a use in Category 2 or 4) shall not require SEPA review. Uses listed in Table B are as defined in Chapter 23.84A of the Land Use Code. Uses not specifically listed in Table B will be considered to belong to the category containing the uses most similar in nature and/or relative intensity, in the judgment of the Director.

4. Subject to Sections II.C.1, 2, and 3 above, and except as specifically provided in Sections II.D, E and F below, a change of use of an area requires SEPA review if and only if the resulting use is non-residential and the change involves an area larger than the exempt area provided for the zone under Section I, Table A of this Rule.

5. *Changes within past two years are evaluated cumulatively.* The two-year past record of changes-in-use (from date of application) will be considered in determining whether SEPA review is required for a current proposal. If past changes-of-use in that timeframe, combined with a current proposal for change-of-use, add up to a change that involves an area that would require SEPA review if undertaken in a single proposal, SEPA review will be required for the current proposal.

TABLE B
Exemptions for Change of Use From One Non-residential Use to Another Non-residential Use in an Existing Building

USE CATEGORIES
Category 1. The following uses: • Offices • Research and development labs • Business incubators • Eating and drinking establishments • Retail sales and service uses • Automotive retail sales and service • Sales and rental of motorized vehicles • Lodging • Medical offices and services • Nursing homes • Schools • Religious facilities • Major Institutions • Theaters, lecture and meeting halls, spectator sports facilities • Libraries, museums, community clubs and centers • "Live-work" units • Indoor participant sports and recreation uses
Category 2. The following uses: • Gas stations • Towing services • Custom and craft work • Food processing for human consumption • Animal shelters and kennels • Rail transit facilities • Passenger terminals • Marine sales and services • Mini-warehouses • Utility services
Category 3. The following uses: • Adult motion picture theaters, adult panorams, adult cabarets • Heavy commercial sales and services • Major automotive vehicle repair • Vehicle storage and maintenance • Warehouse • Wholesale showroom • Light manufacturing • General manufacturing • Cargo terminals • Dry boat storage • Construction services

Category 4. The following uses:
• Salvage yards
• Heavy manufacturing
• Major communication utility
• Jails
• Work-release centers
• High-impact uses
• Power plants
• Recycling
• Sewage treatment plant
• Solid waste management

Notes: If a use is not listed in this table, it will be categorized according to its relative intensity compared to other uses listed in these categories, in the judgment of the Director.

D. *Parking.* Except where parking is exempted from SEPA review because it is accessory to an otherwise exempt "infill development" in an Urban Center, or an Urban Village that contains a Station Area Overlay District, a change of use that is an increase of more than 40 parking spaces will require SEPA review. An increase in parking that causes the total parking quantity to surpass 40 spaces for the first time will require SEPA review, regardless of the number of parking spaces added, unless it is part of an "infill development" located in an Urban Center, or an Urban Village that contains a Station Area Overlay District.[3]

E. *Landmarks.* If the subject property includes a landmark, a change of use may require SEPA review. Refer to CAM 3000 for more information.

F. If located over water or in an Environmentally Critical Area listed in SMC 25.05.908A (including landslide-prone areas, riparian corridors, wetlands, and fish and wildlife habitat conservation areas), any change of use will require SEPA review.

Section III. Exemptions for Expansion of an Existing Use or Structure

A. *SEPA Review Exemptions for Expansions Described in Table C.* The exemptions in Table C relate to physical expansions in uses or structures (including more floor area, larger building footprint and/or increased parking), which may or may not relate to increased total dwelling unit counts.[4]

Any expansion up to the amount shown on Table C does not require SEPA review, unless located over water or in an Environmentally Critical Area. See Section III.C below.

B. *Based on Entire Development at the Site.* Exemptions from SEPA will be based on the area and number of units in the entire development on the site, rather than based on the area and number of units in individual structures.

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[3] Refer to Section I.B about uses for which parking thresholds are measured according to square footage.
[4] Refer to Section II for guidance on changes in use in an existing structure if that is applicable.

TABLE C
Exemptions from SEPA Review for Expansions of Existing Uses or Structures, Not Including Expansions on Lands Covered by Water or in Environmentally Critical Areas

Use/Zone	Level of expansion exempt from SEPA
RESIDENTIAL USES	
Single Family Residence	All expansions are exempt, except as further limited on lands covered by water and for certain expansions in Environmentally Critical Areas.
Expansion of multifamily structure without adding units	If the total number of units remains less than the exempt number of units for a new building in the zone according to Section I of this Rule, then any structural addition is exempt from SEPA review. If the total number of units is already over the exempt number of units under Section I, an expansion of the structure is exempt from SEPA review if it does not add dwelling units.
Addition of units to a multifamily or mixed-use development	If the total number of dwelling units remains less than the exempt number of units for a new building in the zone according to Section I of this Rule, then a structural addition that adds units is exempt from SEPA review. If a development already exceeds the applicable threshold, an increase of no more than 50 percent in the total number of units in the development on the site is exempt from SEPA review, unless the number of units added itself exceeds the categorical exemption for the zone.
NON-RESIDENTIAL USES	
Applicable to all zones where non-residential uses are allowed	If existing gross floor area in non-residential use in a development is below the applicable threshold, an increase in gross floor area is exempt if it doesn't bring the total non-residential gross floor area of the development over the applicable threshold for the first time. If an existing development already exceeds the applicable threshold, an increase of up to 50 percent of the existing gross floor area is exempt if the floor area increase itself is no more than the applicable threshold. (Refer to the thresholds in Table A of this Rule.)
Parking	40 parking spaces. See Section III.E for more guidance.

C. *Environmentally Critical Areas.* In certain Environmentally Critical Areas (known and potential landslide areas, steep slope areas, riparian corridors, wetlands, and fish and wildlife habitat conservation areas, as regulated under SMC Chapter 25.09), physical expansion of a single family residential development, including accessory structures and site work, is categorically exempt from SEPA review if development coverage does not exceed 9,000 square feet. (See definition of "development coverage in Section I.C of this Director's Rule, and the definition of "development" in SMC 25.09.520). Expansion of any other building or any outdoor area devoted to active use requires SEPA review if the site is in one of the listed Environmentally Critical Areas, provided that if the site qualifies for an exemption from Environmentally Critical Areas review such that the site

is treated as non-critical, it shall be treated as a non-critical area for purposes of determining SEPA exemption levels.

D. *Lands Covered by Water.* Physical expansion of structures on or over lands covered by water shall require SEPA review.

E. *Parking.* Refer to Sections I.B and II.D for parking thresholds that also relate to expansions of uses, including for uses that may involve outdoor parking or storage of vehicles. The SEPA review exemption for parking that is accessory to "infill development" in an Urban Center, or an Urban Village containing a Station Area Overlay District, as mentioned in Sections I.A and I.B of this Rule, also will apply to expansions of uses as long as they qualify as this type of "infill development."

Parking expansions within past five years are evaluated cumulatively. The five-year past record of parking expansions (from date of application) will be considered in determining whether SEPA review is required for a current proposal. If past parking expansions in that timeframe, combined with a current proposal for parking expansion, add up to an expansion of more than 40 parking spaces that would require SEPA review if undertaken in a single proposal, SEPA review will be required for the current proposal (unless it is undertaken as part of an expansion of use that qualifies as "infill development" in an Urban Center, or an Urban Village containing a Station Area Overlay District).

F. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, residential uses will be evaluated according to number of dwelling units, and non-residential uses will be evaluated according to square footage of gross floor area in the determination of exemption from environmental review. Refer to Section I.D for further description, and Section I.F regarding "live-work" uses.

Section IV. Other Exemptions and Thresholds

A. *Lot Boundary Adjustments.* Lot boundary adjustments do not require SEPA review.

B. *Short Plats.* Short subdivision of land, in areas not covered by water and not designated as Environmentally Critical Areas, does not require SEPA review. Pursuant to SMC 25.05.908, short platting in Environmentally Critical Areas is not exempt from environmental review, even if the result is to create only one additional lot. SEPA review is required for short subdivision of lands covered by water.

C. *Repair or Minor Alteration of Structures.* The repair, remodeling, maintenance, enclosure or minor alteration of existing structures, or of portions of existing structures, is exempt from SEPA so long as it does not result in a material expansion or change of use. The following list contains examples of accessory features that, when altered, repaired, maintained or added to an existing structure located outside of any Environmentally Critical Area or any lands covered by water, are exempt from SEPA review:

1. Stairways and stairwells
2. Heating and air conditioning equipment

3. Porches and decks
4. Canopies, awnings and marquees
5. Fences
6. Landscaping
7. Signs, other than billboards
8. Doors, entrances, and windows
9. Roofing or siding
10. Painting
11. Transformer vaults
12. Mechanical penthouses
13. Restrooms
14. Barrier-free access

D. *Tanks.* Installation of one or more underground tanks is exempt from SEPA review unless the total capacity of the tank or tanks exceeds 10,000 gallons. Installation of cisterns to hold rainwater or other above-ground tanks will be evaluated for their relationship to SEPA exemptions by considering them as structures or parts of structures and counting their footprint coverage area as part of gross floor area. Such coverage will be evaluated against the non-residential use exemption levels in Section I, Table A of this Rule.

E. *Grading.* The grading of less than 500 cubic yards in areas other than those designated as Environmentally Critical Areas or lands covered by water is exempt from SEPA review.

F. *Interior Demolition and Structural Reinforcement.* In nonexempt projects, interior demolition and structural reinforcement activities shall be considered exempt activities and shall be permitted under SMC 25.05.305 unless:

1. The activities may alter designated or eligible historical features; or
2. The activities will eliminate the effective maintenance of a use in the current use category. The approval of these exempt activities does not constitute approval of nonexempt activities.

G. *Accessory Communication Devices.* The following accessory communication devices qualify as "minor accessory facilities" under SMC 25.05.800 B.4 and are categorically exempt from SEPA review:

1. Satellite dish antennas that transmit and receive if:
   - accessory to a use located on the same site,
   - 6 feet or less in diameter, and
   - use no more than 2 watts of power.
2. Point-to-point dish and panel antennas that transmit as well as receive, if:
   - accessory to a use located on the same site, and
   - no more than 4 feet in diameter or 15 square feet.
3. Receive-only dish and panel antennas, if
   - accessory to a use located on the same site, and

- no more than 12 feet in diameter or 38 square feet.

H. *Minor Antennas.* The following shall be categorically exempt from SEPA review:

- "Whip" antennas: Tubular antennas (resembling flagpoles) if they are 4 inches or less in diameter.
- GPS (global positioning satellite) antennas: Small, round antennas (resembling hockey pucks) that are typically placed on roofs of buildings.
- "Test mobile" antennas: Small, prism-shaped antennas that are mounted near other antennas to act as monitors.

I. *Addition of Antennas to Existing Transmission Towers.* Addition of one or more antennas to an existing transmission tower shall be categorically exempt from SEPA review unless the addition constitutes "physical expansion of a communication utility" as defined at SMC 23.84.006.

J. *Satellite Earth Station Antennas.* The following standards shall govern whether SEPA review is required for satellite earth station antennas (which are dishes or similar antennas pointed up at satellites in geostationary orbit):

1. *Antennas one meter (3.28 feet) or smaller in diameter*: SEPA review shall be required only if the antenna is to be located in a historic district or on a site or structure designated as a historic landmark.
2. *Antennas two meters (6.56 feet) in diameter or smaller, but larger than one meter in diameter*: SEPA review is required for those antennas to be located in residential zones (including single family, multifamily, DMR and IDR). SEPA review is not required for those antennas to be located in other downtown zones or in commercial or industrial zones.[5]
3. *Antennas larger than two meters in diameter*: SEPA review is required unless the antenna qualifies for an exemption under another section of this Rule.

K. *Video Programming Antennas.* Video programming antennas are "over-the-air reception" antennas that allow people to receive satellite television signals. Some video programming antennas are also satellite earth stations, which may qualify for exemption under Section IV.I of this Rule. No SEPA review is required for installation of the following types of antenna, unless the antenna is to be located in a historic district or on a site or structure designated as a historic landmark:

1. TBS: An antenna designed to receive television broadcast services.
2. DBS: An antenna, one meter or less in diameter, designed to receive direct broadcast satellite service, including direct-to-home satellite service.
3. MMDS: An antenna, one meter or less in diameter or on the diagonal, designed to receive video programming services via multi-point distribution services.

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[5] Taken together, paragraphs J1 and J2 of this Section reflect an anomaly in federal law that the City remains bound to uphold: If the site is a historic landmark or is in a historic district, and the zoning is not residential, an antenna up to one meter in diameter would require SEPA review, while an antenna that is greater than one meter in diameter but less than two meters in diameter would not require SEPA review. (*Compare* 47 CFR 25.104 *and* 47 CFR 1.4000.)

L. *Microcells and Other Personal Wireless Communication Service Antennas.* The following standards govern whether personal wireless service facilities are exempt from SEPA review:

1. Microcells: A facility is exempt from SEPA review if:
   - it is a microcell and
   - it is to be attached to an existing structure that does not contain a residence or a school.

2. Other personal wireless service antennas: A facility is exempt from SEPA review if:
   - it includes personal wireless services antennas, other than a microcell, and
   - it will be attached to an existing structure (which may be a tower) that does not contain a residence or a school, and
   - it is located in a Commercial, Downtown, or Industrial zone.

3. Towers (including monopoles): A facility is exempt from SEPA review if:
   - it is a personal wireless service tower less than 60 feet in height and
   - it is located in a Commercial, Downtown, or Industrial zone.

M. *Key Definitions in State Law.* State law defines "personal wireless services" as "commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services, as defined by federal laws and regulations." (RCW 43.21C.0384(3)(a).) Cellular telephone facilities fall under the category of commercial mobile services.

"Microcell" is defined as "a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length." (RCW 43.21C.0384 (3)(c).) The exemption for a microcell is limited to facilities with no more than one microcell antenna. If an applicant proposes to add two or more microcell antennas at a single site, the exemption does not apply. If a proposed facility will consist of more than one microcell, or both a microcell and other personal wireless service antennas that do not meet the definition of "microcell," whether the facility is exempt from SEPA review shall be determined according to Section IV.L, paragraph 2 ("Other personal wireless service antennas") of this Rule. If it is attached to an existing structure that does not contain a residence or a school, and it is located in a Commercial, Downtown, or Industrial zone, it qualifies for an exemption from SEPA review.

N. *Farmer's Markets.* An intermittent retail sales use occurring not more often than two days per week, providing opportunities for residents to purchase produce, art/craft items, and similar goods from temporary facilities such as tables and covered areas, is exempt from SEPA review, based on interpretation of the intent of SMC 25.05.800.N.3-4, which indicate that licenses to operate or engage in charitable or retail sales and service activities, including but not limited a wide variety of shops (in N.4) and entertainment activities (in N.3) are exempt.

EXHIBIT B

City of Seattle
Office of Housing

FORM OF APPLICATION

Multifamily Housing Property Tax Exemption Program

Please read the following before filling out the application:

1. Applications must be submitted any time **prior** to issuance of the first building permit by DPD for the project described in this application. Permits may be picked up any time after the Owner submits an application to the Office of Housing.

2. One copy of the application, including program fee, should be submitted to:

   Office of Housing
   Seattle Municipal Tower
   700 Fifth Avenue, 57th floor
   PO Box 94725
   Seattle, WA 98124-4725

   Current Fee Schedule: $3,000 for residential-only project; $3,400 for mixed-use project.

3. Answers to commonly asked questions:

   A. Affordable unit rent limits represent the maximum that can be charged for rent plus utilities.

   B. A charge for parking does not count toward the maximum rent for affordable units as long as the charge is optional;

   C. The mix and configuration of affordable units must be proportional to the mix and configuration of the total units in a project; for example, if studios are 30% of total units, no more than 30% of the affordable units can be studios.

Questions? Contact Mike Kent at (206) 684-0262 or mike.kent@seattle.gov.

APPLICATION

Multifamily Housing Property Tax Exemption

(Pursuant to Chapter 5.73 of the Seattle Municipal Code)

Applicant's Information

Owner: JUNO LLC

Address: 3704 EAST HOWE ST SEATTLE, WA 98112

Phone: 206-954-3010 FAX: _____

E-mail: peter-jones@msn.com

Owner's Representative: ROBERT McCULLOUGH
(if applicable)

Address: 6869 WOODLAWN AVE NE # 110

Phone: 206-255-5119 FAX: 206-686-4770

Email: bob@meridianbi.com

Contact name and number: ROBERT McCULLOUGH 206-255-5119

Note: This application is intended to be signed by the building owner of record. The application may be rejected or additional documentation required if the signer is other than the building owner of record.

Property Information

Interest in property:
[X] Fee Simple [ ] Contract purchase [ ] Other (describe) _____

County Assessor's parcel account number(s): 092504-9230

Street Address: 4742 20TH AVE NE SEATTLE, WA 98105

Legal Description (Attach separate sheet if needed): BEG 91.78 FT N & 30 FT E OF SW COR OF N 1/4 OF SE 1/4 OF SW 1/4 TH E 100 FT TH N 45 FT TH W/ 100 FT TO 20TH AVE NE TH S 45 FT TO BEG

Residential Targeted Area (See SMC 5.73.030(D)): UNIVERSITY DISTRICT NW

Project Information

Project Name or Designation: JUNO STUDIOS

Brief written description of the project (preliminary conceptual design, description of unit finishes, site plan and floor plans of the units and structure must be submitted with this application):

40 - UNIT APARTMENT BUILDING

Type of Project (check all that apply):

[X] Residential Rental [ ] Residential For-Sale [ ] Mixed Use

Number of Dwelling Units Proposed: Rental 40 For Sale _____ Total _____

Floor area: Building total (sq. ft.) 9,826 For permanent residential occupancy (sq. ft.)* 9,826

If there are multiple buildings, please list them separately.

*Include residential common areas, circulation and mechanical space, and residential parking in calculation of residential square footage. Exclude dwelling units offered for rent for periods of less than one month. "Residential parking" includes: *(1) parking required by the Seattle Land Use Code as accessory to residential use; (2) resident parking included in lease or sale price of residential units; (3) parking restricted by agreement to use by residential owners or tenants.*

Unit Information

Unit Type (# BRs)	Total # of units	Approx. avg. sf.	Projected rent or sales price – market rate units	# of units – affordable	Projected rent or sales price – affordable units
STUDIO	40	180		40	$700.00
Total	40			40	$700.00

Non-residential Space (if applicable)

Description	Floor Area (sq. ft.)

Affordability. To be granted the tax exemption, the owner must agree to meet the following requirements: (please affirm by checking one).

[X] For Rental Projects: at least 20% of the units affordable at or below 65% of median income for studios, at or below 75 % of median for 1-bedroom units, and at or below 85% of median for 2-bedroom and larger units.

[ ] For Homeownership Projects: units affordable at or below 100% of median income for studios, at or below 100% for 1-bedroom units, and at or below 120% of median for 2-bedroom and larger units are eligible for consideration. The units must be identified.

Construction costs and permit status:

Projected total cost of new construction/rehabilitation: $ 1,500,000

If mixed use, projected cost of residential improvements: $ _____

Estimated construction start date: 9/3/13 Estimated completion date: 4/1/14

List permits (with permit numbers) and approvals obtained as of the date of tax exemption application:

CHECK ALL THAT APPLY:

[X] **New Construction.** Will any occupied housing units be demolished? [ ] YES [X] NO

Were any occupied housing units demolished in the past [ ] months on this site? [ ] YES [X] NO

Date of demolition (if known): _____

# of existing units to be demolished _____ # of units demolished in past [ ] months _____

If yes, will any residents be displaced, or have any residents been displaced, as part of this project?
[ ] YES [ ] NO

[ ] **Other City of Seattle Programs.** Do you intend to apply to any other City of Seattle incentive programs? [ ] YES [X] NO

If yes, please state the incentive program and the status of that application:

_____

_____

[ ] **Rehabilitation of Vacant Units.** # of vacant housing units _____

Date units last occupied: _____ Building [ ] is [ ] is not in compliance with applicable building and housing codes.

- Sign (before a Notary Public) the Rehabilitation of Vacant Building Affidavit (form available from Office of Housing) and attach to this Application if you are rehabilitating a vacant multifamily housing structure.
- Attach verification from the Department of Planning and Development if building is not in compliance with building and housing codes.

[ ] **Rehabilitation of Occupied Units.** Will four or more additional units be created as part of a rehabilitation project? [ ] YES [ ] NO

If yes, will any residents be displaced as part of this project? [ ] YES [ ] NO

Attachments to Application

Please attach and check the following:

[ ] Preliminary conceptual design, including site plan and floor plans of the multifamily units and the overall structure.

[ ] A current title report.

[ ] Copies of documents evidencing the type of Owner entity or entities and organizational structure, such as operating agreements, incorporation documents or partnership agreements.

[ ] A sample signature block for the Owner entity.

[ ] Evidence of authority of the person or persons signing the application.

[ ] A market study, that includes comparable rents in other nearby housing projects.

[ ] For rehabilitation of an existing vacant structure, verification from DPD of non-compliance with applicable building and housing codes.

[ ] Application fee of $3,000 for residential use building, or $3,400 for mixed residential and non-residential use building. Checks should be made payable to the City of Seattle.

[ ] If applicable, Rehabilitation of Vacant Building Affidavit (form available from Office of Housing), filled out and signed by Owner before a Notary Public.

Statement of Potential Tax Liability

If the exemption is canceled for non-compliance an additional tax will be imposed that includes: (a) the difference between the tax paid and the tax that would have been owed if it had included the value of the non-qualifying improvements dated back to the date that the improvements became non-qualifying; (b) a penalty of 20% of the difference; (c) interest at the statutory rate on the tax and penalties calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by Chapter 84.14 RCW and Chapter 5.73 SMC.

Owner's initials: PJ

Certification

As owner(s) of the land described in this application, I/We hereby indicate by my/our initials below that I/we are aware of the additional tax liability to which the property will be subject if the exemption authorized by Chapter 84.14 RCW and Chapter 5.73 SMC is canceled.

Owner's initials: PJ

I/We declare under penalty of perjury under the laws of the State of Washington that the information contained in this Application and any attachments are accurate and correct to the best of my/our knowledge.

Peter Jones 8/6/13

Owner's Signature Date

Peter Jones, member, JUNO LLC

Print Name Title

Owner's Signature Date

Print Name Title

EXHIBIT C

Permit Number:
6356092

CITY OF SEATTLE
Construction Permit

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

DISTRICT 3

APN #:
092504-9230

Site Address: 4742 20TH AVE NE, SEATTLE, WA

Building ID: 000031863 - CONGREGATE RESIDENCE
Location:

Legal Description: BEG 91.78 FT N & 30 FT E OF SW COR OF N ¼ OF SE 1/4 OF SW 1/4 TH OF SEC 9-25-4 E THE E 100 FT TH N 45 FT TH W 100 FT TO 20TH AVE NE TH S...(see file)
Records Filed At: 4742 20TH AVE NE

OWNER
BOB MCCULLOUGH
6869 WOODLAWN AVE NE 110
SEATTLE, WA 98115
Ph: (206) 255-5119

CONTRACTOR

Application Date:	05/09/2013
Issue Date:	08/23/2013
Expiration Date:	02/23/2015
Fees Paid:	$12,439.25
As of Print Date:	08/23/2013

Description of Work: Construct congregate residence and establish use as a residential building and occupy, per plans.

Permit Remarks:

Building Code:	SBC 2009
DPD Valuation:	$983,534
Occupancy Cert Required:	Y
Special Inspections:	Y
Land Use Conditions:	N

Building Information:

Basements:	1
Stories:	4
Mezzanines:	0

Residential Units this Permit:

Added:	20
Removed:	0
Total:	20

Zoning/Overlays:
Lowrise-3

Non-Separated Uses: Y **Site Final Required:** Y

Occupancy per Building Code

Floors	Type	Occupancy Group	Occupancy	Asmbly Load	Fire
All Floors	VA	R-2 Other	Congregate Residence.	N/A	13

Approved Use per Land Use Code

Use	Location
Congregate Res	

A/P #	Related Cases/Permits
6364740	Demolition Permit

Project Contacts	Name	Phone
Ordinance Reviewer	NOURI SAMIEE-NEJAD	(206) 733-9057
Structural Reviewer	CORNELL BURT	(206) 684-7844
Zoning Reviewer	CHRISTOPHER NDIFON	(206) 233-7938
Primary Applicant	MIKE PERRY	(425) 827-9293

Applicant Signature: **Date:** 8/23/13

Permitted work must not progress without prior inspection approval. When ready for inspection, make request with the Department of Planning and Development at (206) 684-8900 or on the internet at: www.seattle.gov/dpd/permits/inspections/. Provide the permit number, site address, and contact phone. Permission is given to do the above work at 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. Correct information is the responsibility of the applicant. Permits with incorrect information may be subject to additional fees.

THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

City of Seattle
PERMIT # 6366092 Department of Planning and Development
700 Fifth Ave., Suite 2000

POST THIS SIDE OUT: THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

TO THE CONTRACTOR/OWNER:

Additional permits may be required for work occurring under this permit. This permit does not authorize Sewer, Public Right-of-Way, Shoring, Drainage and Street Use, Fire Department, Boiler, Electrical, Elevator, Furnace, Gas Piping, Plumbing, or Sign permits. If other permits are required, they must be applied for separately from this permit. The requirements for all other permits related to this Permit must be completed prior to the Final Inspection of this permit.

This Permit's Final Inspection is required. The premises must not be occupied until the Final Inspection is provided and occupancy is authorized by the Seattle Department of Planning and Development.

ISSUED PERMIT STATUS: You can check the status of issued permits on the internet at: www.seattle.gov/dpd

INSPECTION REQUESTS: Please clarify which inspections your project requires before proceeding with your project.

You may request an inspection on the internet or by phone. Inspection requests received before 7:00 AM are scheduled for the same working day. Inspection requests received after 7:00 AM are scheduled for the next working day. Inspectors are available between the hours of 7:30 AM and 8:30 AM.

A) Internet: www.seattle.gov/dpd/permits/inspections/ Under *Scheduling an Inspection* click *Requesting an inspection online*.
B) 24 hour inspection request line at (206) 684-8900, cell phones are discouraged due to frequent connection problems.
C) Customer Service at (206) 684-8950 between the hours of 7:30 AM and 4:30 PM.

BEFORE BEGINNING CONSTRUCTION:

A) Before First Ground Disturbance, request an inspection of installed Erosion Control Measures.
B) When there is Special Inspections, Land Use conditions, and/or unusual design elements, a Pre Construction Conference is required prior to construction. Call 684-8860 to request a Pre Construction conference.
C) If this permit requires a Soil Bearing Capacity special inspection by a Geotechnical Engineer, that approval is required before the foundation pour. The Building Inspector will accept the Geotechnical Engineer's approval signature below.
D) When Special Inspections are required, notify the Special Inspection Agency at least 24 hours in advance.

DURING CONSTRUCTION:

DPD inspectors will provide a copy of each inspection report. These reports must either be kept with this Permit, or kept together where they can be conveniently referenced. Request an inspection for the following installations:

PROPERTY LINES MUST BE ESTABLISHED BY SURVEY STAKES PRIOR TO SETBACK/FOUNDATION INSPECTION.

a.	FIRST GROUND (non disrubance areas, erosion control, tree protection)	f.	INSULATION (Slab, Walls, Ceiling)
b.	SETBACK (Location)	g.	MECHANICAL COVER (If HVAC is authorized by this permit)
c.	FOUNDATION (Footings, Walls) (Soil bearing, Reinforcing steel, Foundation drainage)	h.	MECHANICAL FINAL (If HVAC is authorized by this permit)
d.	STRUCTURAL (Shear Wall, HD's/Straps, Diaphragms)	i.	SITE FINAL (If required by this permit)
e.	FRAMING (Sub floor prior to sheathing, Walls, Ceiling)	j.	FINAL INSPECTION (After all other related permit requirements are completed)

PRIOR TO FINAL BUILDING APPROVAL:

Other permit approval sign-offs may be required prior to the Final Inspection of this permit. To speed-up Final approval of this permit, we recommend you acquire other permit final approvals in the signature boxes provided below.

SOIL BEARING Approved By Engineer Date	BOILER Approved By Date	SEATTLE FIRE DEPARTMENT Approved By Date
ELECTRICAL Approved By Date	ELEVATOR Approved By Date	LAND USE/DESIGN REVIEW Approved By Date
PLUMBING / GASPIPING / BACKFLOW Approved By Date	SITE / SIDE SEWER Approved By Date	SDOT - PRVT CONTRACT/ST. USE Approved By Date
MECHANICAL / REFRIGERATION Approved By Date	OTHER Approved By Date	STREET TREES / ARBORIST Approved By Date

EXHIBIT D

Jessica Clawson

From: Jessica Clawson
Sent: Friday, January 10, 2014 2:08 PM
To: Jessica Clawson
Subject: FW: Juno Apartments - MFTE

From: Kent, Mike [mailto:Mike.Kent@seattle.gov]
Sent: Tuesday, September 03, 2013 3:03 PM
To: Bob McCullough
Subject: Juno Apartments - MFTE

Bob,

As I mentioned a moment ago, we noticed two potential issues with the MFTE application for Juno Apartments:

- The DPD construction permit application (# 6364740) describes the approved use as "congregate residence", whereas the MFTE program is specifically designated for multifamily use. Further, congregate residential buildings typically only contain what is considered a single dwelling unit.
- The number of dwelling units on the DPD construction permit application and the MFTE application need to match identically as per Director's Rule 01-2013. The DPD construction permit application lists the number of dwelling units as 20, whereas the MFTE application lists the number of dwelling units as 40.

Please confer with your architect, as you mentioned, and get back in touch with us at your earliest convenience.

Best,
Mike

Mike Kent
Community Development Specialist
City of Seattle Office of Housing
PO Box 94725, Seattle, WA 98124-4725
700 5th Ave, 57th Floor, Seattle, WA
O: 206.684.0262 | mike.kent@seattle.gov

EXHIBIT E

THE CITY OF SEATTLE
OFFICE OF HOUSING
DIRECTOR'S RULE
PROPERTY TAX EXEMPTION PROGRAM FOR MULTIFAMILY HOUSING

Housing Rule 01-2013 Verification of Number and Type of Dwelling Units

(1) Introduction.

SMC 5.73.020.I. defines Multifamily Housing as "a building or buildings, included associated housing improvements, having four (4) or more dwelling units in each building, designed for Permanent Residential Occupancy resulting from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings."

SMC 5.73.040 requires: "4. For new construction, a minimum of four (4) new dwelling units must be created; for rehabilitation or conversion of existing occupied structures, a minimum of four (4) additional dwelling units must be added."

Applications for tax exemption, the contract between the City and the Owner containing the terms and conditions and eligibility for tax exemption, and the application for a Final Certificate for Tax Exemption all require information on both the number and size (studio, one-bedroom, two-bedroom, etc.) of dwelling units.

This rule explains how the number and size of dwelling units claimed by an Owner in an application for property tax exemption, in the contract between the Owner and the City containing the terms and conditions and eligibility for tax exemption, and in an application for a Final Certificate of Tax Exemption will be verified by the Office of Housing (OH).

(2) Verification of the Number and Size of Dwelling Units. The number and size of dwelling units for purposes of property tax exemption for Multifamily Housing shall be identical to the number and size of dwelling units authorized by the building permit(s) for the Multifamily Housing.

The number and size of dwelling units verified by the Owner in the application for property tax exemption for Multifamily Housing shall be identical to the number and size of dwelling units contained in the Owner's application to the Department of Planning and Development (DPD) for a building permit for the Multifamily Housing, a copy of which shall be provided to OH. If at the time of application for property tax exemption the Owner has not yet submitted a building permit application for the Multifamily Housing to DPD, then upon applying for a building permit the Owner shall notify the OH and shall provide OH with a copy of the application to DPD. An application for tax exemption containing numbers and sizes of dwelling units that do not match the building permit application will be denied. If prior to the Owner's application to DPD for a building permit for the Multifamily Housing OH approves the application for tax exemption and the Owner enters into a contract with the City containing the terms and conditions and

eligibility for tax exemption (Contract), then immediately upon applying for a building permit for the Multifamily Housing the Owner shall notify OH, shall provide OH with a copy of the application to DPD, and, if the numbers and sizes of dwelling units are not identical to the Contract numbers and sizes, shall request amendment of the Contract, which shall be amended to conform to the building permit application. If the numbers and sizes of dwelling units in the final building permit are not identical to the building permit application, then the Owner shall notify OH immediately upon receiving the building permit for the Multifamily Housing, shall provide OH with a copy of the building permit, and shall, as applicable, request to conform the application for property tax exemption or amend the Contract, which shall be amended to conform to the building permit. OH's review of eligibility for a Final Certificate of Tax Exemption will be based upon the numbers and sizes of dwelling units actually permitted by DPD for the Multifamily Housing even if the Owner has failed to provide that information to OH or to conform its application for tax exemption or seek amendment of the Contract.

(3) This Rule shall not apply in cases where the Owner has submitted a fully valid and complete application both for a building permit with DPD and for the MFTE program with OH prior to April 26, 2013. For purposes of this exception, a vested Master Use Permit may substitute for the building permit application.

(4) Capitalized terms used above and not defined shall have the meanings set forth in SMC Chapter 5.73, 2004 Multifamily Housing Property Tax Exemption Program, as amended.

Approved Rick Hooper **Effective** MARCH 12, **2013**

Rick Hooper, Director

EXHIBIT F

Jessica Clawson

From: Mosteller, Cheryl <Cheryl.Mosteller@seattle.gov>
Sent: Monday, November 25, 2013 9:52 AM
To: mperry@dimensions.com
Cc: Jessica Clawson; bob@meridianbi.com; McKim, Andy; Roskin, Miriam; Kent, Mike
Subject: Permit 6356092
Attachments: Permit.pdf

Good Afternoon Mike,

I wanted to let you know that DPD became aware of an issue with the unit count reflected on permit 6356092. As such we have reprinted the permit with a corrected unit count that is consistent with the approved plans. The 20 units originally shown reflects the unit count for purposes of the SEPA exemption determination only, as under Director's Rule 12-2012 for congregate residences each bedroom in a congregate residence is counted as one-half of a dwelling unit for purposes of determining whether a development is exempt from SEPA review. A unit count of 20 was not otherwise applied in our review, for example for purposes of density standards or determining whether Design Review is required. The reprinting of the permit is for the purpose of clarifying the unit count, which could otherwise create confusion when the building is inspected. This does not in any way limit the right to build the structure as configured on the approved plans, or occupy it as a congregate residence, as proposed.

Thank you.

Cheryl Mosteller
Land Use Planner Supervisor
Department of Planning and Development
700 Fifth Ave, Suite 2000
Seattle, WA 98104-5070
cheryl.mosteller@seattle.gov
(206) 684-5048

Permit Number: 6356092

DISTRICT 3

CITY OF SEATTLE
Construction Permit

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

APN #: 092504-9230

Site Address: 4742 20TH AVE NE, SEATTLE, WA

Building ID: 000031863 - CONGREGATE RESIDENCE
Location:

Legal Description: BEG 91.78 FT N & 30 FT E OF SW COR OF N ¼ OF SE 1/4 OF SW 1/4 TH OF SEC 9-25-4 E THE E 100 FT TH N 45 FT TH W 100 FT TO 20TH AVE NE TH S...(see file)
Records Filed At: 4742 20TH AVE NE

OWNER	CONTRACTOR
BOB MCCULLOUGH 6869 WOODLAWN AVE NE 110 SEATTLE, WA 98115 Ph: (206) 255-5119	

Application Date:	05/09/2013
Issue Date:	08/23/2013
Expiration Date:	02/23/2015
Fees Paid:	$12,575.00
As of Print Date:	11/22/2013

Description of Work: Construct congregate residence and establish use as a residential building and occupy, per plans.

Permit Remarks:

Building Code:	SBC 2009
DPD Valuation:	$983,534
Occupancy Cert Required:	Y
Special Inspections:	Y
Land Use Conditions:	N

Building Information:	
Basements:	1
Stories:	4
Mezzanines:	0

Residential Units this Permit:	
Added:	1
Removed:	0
Total:	1

Non-Separated Uses: Y **Site Final Required:** Y

Zoning/Overlays:
Lowrise-3

Occupancy per Building Code					
Floors	Type	Occupancy Group	Occupancy	Asmbly Load	Fire
All Floors	VA	R-2 Other	Congregate Residence.	N/A	13

Approved Use per Land Use Code	
Use	Location
Congregate Res	

A/P #	Related Cases/Permits
6364740	Demolition Permit
6387092	Side Sewer
6393101	Post Issuance Submittal

Project Contacts	Name	Phone
Ordinance Reviewer	NOURI SAMIEE-NEJAD	(206) 733-9057
Structural Reviewer	CORNELL BURT	(206) 684-7844
Zoning Reviewer	CHRISTOPHER NDIFON	(206) 233-7938
Primary Applicant	MIKE PERRY	(425) 827-9293

Applicant Signature: **Date:**

Permitted work must not progress without prior inspection approval. When ready for inspection, make request with the Department of Planning and Development at (206) 684-8900 or on the internet at: www.seattle.gov/dpd/permits/inspections/. Provide the permit number, site address, and contact phone. Permission is given to do the above work at 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. Correct information is the responsibility of the applicant. Permits with incorrect information may be subject to additional fees.

THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

PERMIT # 6356092

City of Seattle
Department of Planning and Development
700 Fifth Ave., Suite 2000

POST THIS SIDE OUT: THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

TO THE CONTRACTOR/OWNER,

Additional permits may be required for work occurring under this permit. This permit does not authorize Sewer, Public Right-of-Way Shoring, Drainage and Street Use, Fire Department, Boiler, Electrical, Elevator, Furnace, Gas Piping, Plumbing, or Sign permits. If other permits are required, they must be applied for separately from this permit. The requirements for all other permits related to this Permit, must be completed prior to the Final Inspection of this permit.

This Permits Final Inspection is required. The premises must not be occupied until the Final Inspection is provided and occupancy is authorized by the Seattle Department of Planning and Development.

ISSUED PERMIT STATUS: You can check the status of issued permits on the internet at: www.seattle.gov/dpd

INSPECTION REQUESTS: Please clarify which inspections your project requires before proceeding with your project.

You may request an inspection on the internet or by phone. Inspection requests received **before 7:00 AM** are scheduled for the same working day. Inspection requests received **after 7:00 AM** are scheduled for the next working day. Inspectors are available between the hours of 7:30 AM and 8:30 AM.

A) **Internet:** www.seattle.gov/dpd/permits/inspections/ Under ***Scheduling an Inspection*** click ***Requesting an inspection online.***
B) **24 hour inspection request line at (206) 684-8900,** cell phones are discouraged due to frequent connection problems.
C) **Customer Service at (206) 684-8950** between the hours of 7:30 AM and 4:30 PM.

BEFORE BEGINNING CONSTRUCTION:

A) Before **First Ground Disturbance**, request an inspection of installed **Erosion Control Measures**.
B) When there is **Special Inspections**, Land Use conditions, and/or unusual design elements, a **Pre Construction Conference** is required prior to construction. Call 684-8860 to request a Pre Construction conference.
C) If this permit requires a **Soil Bearing Capacity** special inspection by a Geotechnical Engineer, that approval is required before the foundation pour. The Building Inspector will accept the Geotechnical Engineer's approval **signature below**.
D) When **Special Inspections** are required, notify the Special Inspection Agency at least 24 hours in advance.

DURING CONSTRUCTION:

DPD inspectors will provide a copy of each inspection report. These reports must either be kept with this Permit, or kept together where they can be conveniently referenced. Request an inspection for the following installations:

PROPERTY LINES MUST BE ESTABLISHED BY SURVEY STAKES PRIOR TO SETBACK/FOUNDATION INSPECTION.

a.	**FIRST GROUND** (non distrubance areas, erosion control, tree protection)	f.	**INSULATION** (Slab, Walls, Ceiling)
b.	**SETBACK** (Location)	g.	**MECHANICAL COVER** (If HVAC is authorized by this permit)
c.	**FOUNDATION** (Footings, Walls) [Soil bearing, Reinforcing steel, Foundation drainage]	h.	**MECHANICAL FINAL** (If HVAC is authorized by this permit)
d.	**STRUCTURAL** (Shear Wall, HD's/Straps, Diaphragms)	i.	**SITE FINAL** (If required by this permit)
e.	**FRAMING** (Sub floor prior to sheathing, Walls, Ceiling)	j.	**FINAL INSPECTION** (After all other related permit requirements are completed)

PRIOR TO FINAL BUILDING APPROVAL:

Other permit approval sign-offs may be required prior to the Final Inspection of this permit. To speed-up Final approval of this permit, we recommend you acquire other permit final approvals in the signature boxes provided below.

SOIL BEARING Approved By Engineer / Date	**BOILER** Approved By / Date	**SEATTLE FIRE DEPARTMENT** Approved By / Date
ELECTRICAL Approved By / Date	**ELEVATOR** Approved By / Date	**LAND USE/DESIGN REVIEW** Approved By / Date
PLUMBING / GASPIPING / BACKFLOW Approved By / Date	**SITE / SIDE SEWER** Approved By / Date	**SDOT - PRVT CONTRACT/ST. USE** Approved By / Date
MECHANICAL / REFRIGERATION Approved By / Date	**OTHER** Approved By / Date	**STREET TREES / ARBORIST** Approved By / Date

EXHIBIT 6

Jessica Clawson

From: Kent, Mike <Mike.Kent@seattle.gov>
Sent: Monday, November 25, 2013 10:05 AM
To: Jessica Clawson; bob@meridianbi.com
Cc: Roskin, Miriam
Subject: FW: Permit 6356092
Attachments: Permit.pdf

Jessie and Bob,

As per the email from Cheryl Mosteller at DPD, Juno is permitted for one residential unit. As the MFTE requires that eligible buildings contain 4 or more dwelling units, Juno will not qualify for the MFTE. A formal eligibility determination letter from our office will be forthcoming. Please let me know if you have any questions.

Mike

Mike Kent
Community Development Specialist
City of Seattle Office of Housing
PO Box 94725, Seattle, WA 98124-4725
700 5th Ave, 57th Floor, Seattle, WA
O: 206.684.0262 | mike.kent@seattle.gov

From: Mosteller, Cheryl
Sent: Monday, November 25, 2013 9:52 AM
To: mperry@dimensions.com
Cc: jclawson@mhseattle.com; bob@meridianbi.com; McKim, Andy; Roskin, Miriam; Kent, Mike
Subject: Permit 6356092

Good Afternoon Mike,

I wanted to let you know that DPD became aware of an issue with the unit count reflected on permit 6356092. As such we have reprinted the permit with a corrected unit count that is consistent with the approved plans. The 20 units originally shown reflects the unit count for purposes of the SEPA exemption determination only, as under Director's Rule 12-2012 for congregate residences each bedroom in a congregate residence is counted as one-half of a dwelling unit for purposes of determining whether a development is exempt from SEPA review. A unit count of 20 was not otherwise applied in our review, for example for purposes of density standards or determining whether Design Review is required. The reprinting of the permit is for the purpose of clarifying the unit count, which could otherwise create confusion when the building is inspected. This does not in any way limit the right to build the structure as configured on the approved plans, or occupy it as a congregate residence, as proposed.

Thank you.

Cheryl Mosteller
Land Use Planner Supervisor
Department of Planning and Development
700 Fifth Ave, Suite 2000
Seattle, WA 98104-5070

Jessica Clawson EXHIBIT H

From: Jessica Clawson
Sent: Wednesday, December 18, 2013 6:01 PM
To: 'McKim, Andy'
Subject: RE: Permit 6356092

Thanks Andy. Have a good evening.

Jessica M. Clawson
Attorney-at-Law

McCULLOUGH HILL LEARY, PS
701 FIFTH AVENUE, SUITE 6600
SEATTLE, WA 98104
TEL: 206.812.3388
DIRECT: 206.812.3378
FAX: 206.812.3389
JCLAWSON@MHSEATTLE.COM
WWW.MHSEATTLE.COM

NOTICE: This communication may contain privileged or confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: McKim, Andy [mailto:Andy.McKim@seattle.gov]
Sent: Wednesday, December 18, 2013 5:47 PM
To: Jessica Clawson
Subject: RE: Permit 6356092

Hi, Jessie.

We will be discussing this with Law next Monday.

Andy

From: Jessica Clawson [mailto:Jessica@mhseattle.com]
Sent: Wednesday, December 18, 2013 10:51 AM
To: McKim, Andy
Subject: FW: Permit 6356092

Can we discuss this sometime this week? I'm not clear on the timeline for decision here. Thanks.

Thanks.

Jessica M. Clawson
Attorney-at-Law

McCULLOUGH HILL LEARY, PS
701 FIFTH AVENUE, SUITE 6600
SEATTLE, WA 98104
TEL: 206.812.3388
DIRECT: 206.812.3378
FAX: 206.812.3389

JCLAWSON@MHSEATTLE.COM
WWW.MHSEATTLE.COM

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From: Jessica Clawson
Sent: Thursday, December 12, 2013 5:36 PM
To: cheryl.mosteller@seattle.gov; McKim, Andy (Andy.McKim@seattle.gov); Kent, Mike (Mike.Kent@seattle.gov); miriam.roskin@seattle.gov
Cc: 'Mike Perry'; Bob McCullough (bob@meridianbi.com)
Subject: FW: Permit 6356092

Dear Andy,

I understand that you have forwarded this issue to the law department for advisement. I don't know which attorney you are working with, so I would appreciate it if you would forward this to that person.

The reissuance of building permit 6356092 to "revise" the number of units is not permitted by Washington law. The question posed to the law department is identical to the question already answered by the Washington State Supreme Court in *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002). In that case, Nykreim filed a boundary line adjustment (BLA) application, which Chelan County approved on October 9, 1997. In May 1998 Nykreim filed a conditional use permit (CUP) application to construct homes on the lots created by the BLA. In August 1998 Chelan County withdrew the certificate that had approved the BLA stating that the BLA had been approved based on erroneous information. The Washington State Supreme Court ruled that Chelan County's actions were not permitted under the Land Use Petition Act, Chapter 36.70C RCW.

The Court stated:

> Before LUPA, a line of Washington cases held that an improperly approved building permit is void and may be rescinded by the agency which erroneously issued it. Those cases were based upon holdings that a building permit issued in violation of law or under mistake of fact conferred no vested right in the applicant. 146 W.2d 919 (citing *Steel v. Queen City Broad. Co.,* 54 Wn.2d 402, 341 P.2d 499 (1959); *Radach v. Gunderson,* 39 Wn. App. 392, 695 P.2d 128 (1985).

The Court applied LUPA to ministerial permits such as building permits or BLAs and declined to allow Chelan County to rescind or void its issued BLA. Instead, the Court stated that the County was required to appeal its issued permit within LUPA time periods:

> To allow (the County) to challenge a land use decision beyond the statutory period of 21 days is inconsistent with the Legislature's declared purpose in enacting LUPA. Leaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature's intent to provide expedited appeal procedures in a consistent, predictable, and timely manner. 146 Wn.2d at 931.

Nykreim applies to the case currently before DPD. In this case, the City issued a building permit authorizing "20 units." The permit was issued on August 23, 2013. According to DPD's email below, the unit count reflects the unit count "for purposes of the SEPA exemption determination only" but DPD claims it was not otherwise applied in DPD's review for design review or density standards. DPD then "reprinted" the building permit to clarify the unit count on November 22, 2013. It does not appear that the City is requiring the building to go through design review.

DPD reprinted the building permit to reduce the number of units permitted in order to deny the project MFTE status. MFTE is only available for projects that produce 4 or more dwelling units. SMC 5.73.040.A.4. The applicant

submitted its MFTE application months ago, and relied on information furnished by DPD regarding how it would consider the number of dwelling units. It has relied on the building permit that was issued for 20 dwelling units. DPD's reissuance of the building permit has now pulled the rug out from under our MFTE application which is critical to our project.

The Washington State Supreme Court's ruling in Nykreim and subsequent cases does not allow DPD to "reissue" a building permit. The effect of the reissuance is purposeful, to deny the project the benefit of the MFTE. If DPD determined that the permit was issued in error, like in Nykreim, it was required to appeal its permit under LUPA. It did not do so, and the building permit issued in August for 20 dwelling units should be considered to be final, and should be considered for the project's MFTE application.

We would appreciate your confirmation regarding this issue.

Thank you for your attention. Jessie

Jessica M. Clawson
Attorney-at-Law

McCULLOUGH HILL LEARY, PS
701 FIFTH AVENUE, SUITE 6600
SEATTLE, WA 98104
TEL: 206.812.3388
DIRECT: 206.812.3378
FAX: 206.812.3389
JCLAWSON@MHSEATTLE.COM
WWW.MHSEATTLE.COM

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From: Kent, Mike [mailto:Mike.Kent@seattle.gov]
Sent: Monday, November 25, 2013 10:05 AM
To: Jessica Clawson; bob@meridianbi.com
Cc: Roskin, Miriam
Subject: FW: Permit 6356092

Jessie and Bob,

As per the email from Cheryl Mosteller at DPD, Juno is permitted for one residential unit. As the MFTE requires that eligible buildings contain 4 or more dwelling units, Juno will not qualify for the MFTE. A formal eligibility determination letter from our office will be forthcoming. Please let me know if you have any questions.

Mike

Mike Kent
Community Development Specialist
City of Seattle Office of Housing
PO Box 94725, Seattle, WA 98124-4725
700 5th Ave, 57th Floor, Seattle, WA
O: 206.684.0262 | mike.kent@seattle.gov

From: Mosteller, Cheryl
Sent: Monday, November 25, 2013 9:52 AM
To: mperry@dimensions.com

Cc: jclawson@mhseattle.com; bob@meridianbi.com; McKim, Andy; Roskin, Miriam; Kent, Mike
Subject: Permit 6356092

Good Afternoon Mike,

I wanted to let you know that DPD became aware of an issue with the unit count reflected on permit 6356092. As such we have reprinted the permit with a corrected unit count that is consistent with the approved plans. The 20 units originally shown reflects the unit count for purposes of the SEPA exemption determination only, as under Director's Rule 12-2012 for congregate residences each bedroom in a congregate residence is counted as one-half of a dwelling unit for purposes of determining whether a development is exempt from SEPA review. A unit count of 20 was not otherwise applied in our review, for example for purposes of density standards or determining whether Design Review is required. The reprinting of the permit is for the purpose of clarifying the unit count, which could otherwise create confusion when the building is inspected. This does not in any way limit the right to build the structure as configured on the approved plans, or occupy it as a congregate residence, as proposed.

Thank you.

Cheryl Mosteller
Land Use Planner Supervisor
Department of Planning and Development
700 Fifth Ave, Suite 2000
Seattle, WA 98104-5070
cheryl.mosteller@seattle.gov
(206) 684-5048

EXHIBIT I

City of Seattle
Office of Housing

December 10, 2013

Juno, LLC
Attention: Robert McCullough
6869 Woodlawn Ave. NE #110
Seattle, WA 98115

RE: Multifamily Housing Property Tax Exemption, Juno Studios

Dear Mr. McCullough:

Thank you for submitting an application for the Juno Studios project, to be located at 4742 20th Ave. NE, to receive the Multifamily Housing Property Tax Exemption. During our initial review of your MFTE application, the number of dwelling units indicated in your MFTE application (40) did not match the number of dwelling units in the building permit application filed with the Department of Planning and Development (20). As we notified you in September, this mismatch triggered Housing Director's Rule 01-2013, which limits MFTE eligibility to projects where the number of dwelling units presented to OH for purposes of MFTE and identified by DPD for purposes of permitting are identical.

Subsequent to our email exchange in September, DPD revised the building permit to indicate that your building would contain only one dwelling unit. This not only furthered the discrepancy but also made the project ineligible for MFTE for a second reason: The MFTE program requires that eligible buildings contain a minimum of four dwelling units.

For these reasons, we are unable to proceed toward issuing a Conditional Certificate of Tax Exemption for the Juno Studios project. If you wish to appeal this decision, please refer to SMC 5.73.060, which details the process for filing an appeal.

Sincerely,

Rick Hooper

Rick Hooper
Director

cc: Jessica Clawson

Enclosures

EXHIBIT J

REVISED APPLICATION 12/13/13

City of Seattle
Office of Housing

FORM OF APPLICATION

Multifamily Housing Property Tax Exemption Program

Please read the following before filling out the application:

1. Applications must be submitted any time **prior** to issuance of the first building permit by DPD for the project described in this application. Permits may be picked up any time after the Owner submits an application to the Office of Housing.

2. One copy of the application, including program fee, should be submitted to:

   Office of Housing
   Seattle Municipal Tower
   700 Fifth Avenue, 57th floor
   PO Box 94725
   Seattle, WA 98124-4725

   Current Fee Schedule: $3,000 for residential-only project; $3,400 for mixed-use project.

3. Answers to commonly asked questions:

   A. Affordable unit rent limits represent the maximum that can be charged for rent plus utilities.

   B. A charge for parking does not count toward the maximum rent for affordable units as long as the charge is optional;

   C. The mix and configuration of affordable units must be proportional to the mix and configuration of the total units in a project; for example, if studios are 30% of total units, no more than 30% of the affordable units can be studios.

Questions? Contact Mike Kent at (206) 684-0262 or mike.kent@seattle.gov.

APPLICATION

Multifamily Housing Property Tax Exemption
(Pursuant to Chapter 5.73 of the Seattle Municipal Code)

Applicant's Information

Owner: JUNO LLC

Address: 3704 EAST HOWE ST SEATTLE, WA 98112

Phone: 206-954-3010 FAX: _____

E-mail: peter-jones@msn.com

Owner's Representative: ROBERT MCCULLOUGH
(if applicable)
Address: 6869 WOODLAWN AVE NE # 110

Phone: 206-255-5119 FAX: 206-686-4770

Email: bob@meridianbi.com

Contact name and number: ROBERT MCCULLOUGH 206-255-5119

Note: This application is intended to be signed by the building owner of record. The application may be rejected or additional documentation required if the signer is other than the building owner of record.

Property Information

Interest in property:
[X] Fee Simple [ ] Contract purchase [ ] Other (describe) _____

County Assessor's parcel account number(s): 092504-9230

Street Address: 4742 20TH AVE NE SEATTLE, WA 98105

Legal Description (Attach separate sheet if needed): BEG 91.78 FT N & 30 FT E OF SW COR OF N 1/4 OF SE 1/4 OF SW 1/4 TH E 100 FT TH N 45 FT TH W/ 100 FT TO 20TH AVE NE TH S 45 FT TO BEG

Residential Targeted Area (See SMC 5.73.030(D)): UNIVERSITY DISTRICT NW

Form of Application: Multifamily Housing Property Tax Exemption Program
City of Seattle Office of Housing

Project Information

Project Name or Designation: JUNO STUDIOS

Brief written description of the project (preliminary conceptual design, description of unit finishes, site plan and floor plans of the units and structure must be submitted with this application):

APARTMENT BUILDING

Type of Project (check all that apply):

[X] Residential Rental [ ] Residential For-Sale [ ] Mixed Use

Number of Dwelling Units Proposed: Rental 20 For Sale _____ Total _____

Floor area: Building total (sq. ft.) 9,826 For permanent residential occupancy (sq. ft.)* 9,826

If there are multiple buildings, please list them separately.

*Include residential common areas, circulation and mechanical space, and residential parking in calculation of residential square footage. Exclude dwelling units offered for rent for periods of less than one month. "Residential parking" includes: *(1) parking required by the Seattle Land Use Code as accessory to residential use; (2) resident parking included in lease or sale price of residential units; (3) parking restricted by agreement to use by residential owners or tenants.*

Unit Information

Unit Type (# BRs)	Total # of units	Approx. avg. sf.	Projected rent or sales price – market rate units	# of units – affordable	Projected rent or sales price – affordable units
STUDIO	20	180		20	$700.00
Total	20			20	$700.00

EXHIBIT K

Jessica Clawson

From: Jessica Clawson
Sent: Saturday, December 21, 2013 9:11 AM
To: 'Sugimura, Diane'
Cc: cheryl.mosteller@seattle.gov; McKim, Andy (Andy.McKim@seattle.gov); miriam.roskin@seattle.gov; Kent, Mike (Mike.Kent@seattle.gov)
Subject: building permit 6356092, Request for Administrative Review
Attachments: Exhibit A JUNO Original Building Permit 6356092.pdf; Exhibit B JUNO Reprinted Building Permit 6356092.pdf; Permit 6356092; Letter Requesting Administrative review.pdf

Hello All:

Please see our request for administrative review of the reprinting of the building permit on this matter. A hard copy has been sent to Diane today, but email seems to be a bit more efficient.

I understand the law department and DPD will be discussing this matter on Monday. I'll be in the office Monday (and tomorrow as well), so if you have any questions, please let me know.

Thanks.

Jessica M. Clawson
Attorney-at-Law

McCULLOUGH HILL LEARY, PS
701 FIFTH AVENUE, SUITE 6600
SEATTLE, WA 98104
TEL: 206.812.3388
DIRECT: 206.812.3378
FAX: 206.812.3389
JCLAWSON@MHSEATTLE.COM
WWW.MHSEATTLE.COM

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EXHIBIT K

McCULLOUGH HILL LEARY, PS

December 19, 2013

Diane Sugimura
Building Official
Department of Planning and Development
700 5th Avenue, Suite 1900, P.O. Box 34019
Seattle, WA 98124-4019

VIA ELECTRONIC AND U.S. MAIL

RE: Reissuance of Building Permit 6356092, Request for Administrative Review

Dear Diane:

SBC 103.10.1 states:

> **Administrative review by the building official.** Applicants may request administrative review by the building official of decisions or actions pertaining to the administration and enforcement of [the building] code. Requests shall be addressed to the building official.

SBC 104.1 states that the Director of the Department of Planning and Development ("DPD") is the "building official."

We would like to request administrative review, per SBC 103.10.1, of a decision made by DPD to reprint a building permit, changing the number of dwelling units from 20 to 1. We request that DPD rescind its decision to issue the building permit for one unit, and reestablish the prior building permit for 20 units. The currently-known facts of the situation follow.

1. **Facts.**

On August 23, 2013 DPD issued a building permit for a project ("project") located at 4742 20th Avenue NE for a congregate residence including 20 dwelling units. *See* Exhibit A. The project is located in an LR3 zone within the University District Urban Center Village. It replaces a dilapidated house that was previously rented by tenants and is surrounded by dilapidated rental houses with suboptimal rental conditions. On November 22, 2013, the building permit was apparently reissued for 1 dwelling unit. *See* Exhibit B. On November 25, 2013, Cheryl Mosteller of DPD sent an email to Mike Perry, the architect for the project, stating that the building permit had been reprinted "with a corrected unit count that is consistent with the approved plans...the reprinting of the permit is for the purpose of clarifying the unit count, which could otherwise create confusion when the building is inspected." *See* Exhibit C. This was the first time DPD had contacted the developer team regarding this issue.

On August 23, 2013, our client submitted an application for the Multifamily Tax Exemption ("MFTE") program with the Office of Housing. The Office of Housing sent a letter dated December 10, 2013 denying the MFTE application to the developer, although this letter was not received by the developer until DATE. One of the reasons given for denial of the MFTE application is that the building permit was reissued for one unit. The MFTE program is only available to projects that create four or more new multifamily units. SMC 5.73.040.A.4. The loss of the MFTE program will cost the project approximately $300,000.

2. DPD must rescind its decision as it is inconsistent with City Codes or State Law.

First, there is no provision in the Seattle Building Code that allows DPD to "reprint" or reissue a building permit. An act by a municipal corporation is ultra vires when it is done either without authority or in violation of existing statutes. *Dykstra v. Skagit County*, 97 Wn. App. 670, 677, 985 P.2d 424 (1999), *review denied*, 140 Wn.2d 1016 (2000). The reprinting of the building permit is ultra vires as it is without statutory authority and is in direct conflict with other Seattle Building Code provisions. For this reason, the City must withdraw its decision to reprint the building permit.

Second, the determination made by DPD to reprint the building permit to reduce the number of dwelling units from 20 to 1 was not supported by or explained using any code language. Indeed, Ms. Mosteller's email only states that the permit was reprinted to correct the unit count so that it "is consistent with approved plans." Exhibit C. In fact, the Building Code does not support DPD's statement that the project includes only one dwelling unit. The definition of dwelling unit in the Building Code states:

> A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

SBC Section 202.

This project includes at least 40 dwelling units, as defined by the building code. Each unit includes independent living facilities that include permanent areas for living, sleeping, eating, cooking and sanitation, thereby meeting the standards for dwelling units in the Building Code.[1] Thus, DPD's issuance of the permit for both 20 units, and the reprinting of the permit for 1 unit were both in error given the Building Code's definition of dwelling unit—the permit should have been issued for 40 units for the purposes of a building permit.

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[1] Interestingly, a dwelling unit for the purposes of a building permit is not the same for the purposes of the Land Use Code. DR 12-2012 Section 1.E relates to SEPA exemptions when establishing a new use with new construction. The Rule states: "For residential uses not readily described as a discrete number of units, including nursing homes and congregate residences, the exemption will be based on a comparison of sleeping units (functionally equivalent to bedrooms) to dwelling units. Each bedroom will be counted as one-half of one dwelling unit in these cases." Thus, the determination by DPD that the project, a congregate residence with 40 bedrooms, included 20 dwelling units for the purposes of SEPA review was correct.

Third, the project is vested to those regulations in place at the time of building permit application. A permit application shall be considered under the codes, regulations, and interpretations in effect on the date a valid and fully complete building permit application is submitted. SBC 101.3. In this case, the building permit application was submitted on May 9, 2013. It is clear that DPD changed its regulations following issuance of the building permit, since it reprinted the permit to only allow 1 dwelling unit. However, DPD cannot apply different codes or regulations to the project other than those that were in effect at the date of application. DPD must rescind its decision and reissue the building permit for 20 units.

Finally, and probably most importantly, the reprinting/reissuance of a building permit is not permitted by Washington law. The issue raised in this case is identical to the question already answered by the Washington State Supreme Court in *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002). In that case, Nykreim filed a boundary line adjustment (BLA) application, which Chelan County approved on October 9, 1997. In May 1998 Nykreim filed a conditional use permit (CUP) application to construct homes on the lots created by the BLA. In August 1998 Chelan County withdrew the certificate that had approved the BLA stating that the BLA had been approved based on erroneous information. The Washington State Supreme Court ruled that Chelan County's actions were not permitted under the Land Use Petition Act, Chapter 36.70C RCW.

The Court stated:

> Before LUPA, a line of Washington cases held that an improperly approved building permit is void and may be rescinded by the agency which erroneously issued it. Those cases were based upon holdings that a building permit issued in violation of law or under mistake of fact conferred no vested right in the applicant. 146 Wn.2d 919 (citing *Steel v. Queen City Broad. Co.*, 54 Wn.2d 402, 341 P.2d 499 (1959); *Radach v. Gunderson*, 39 Wn. App. 392, 695 P.2d 128 (1985).

The Court applied LUPA to ministerial permits such as building permits or BLAs and declined to allow Chelan County to rescind or void its issued BLA. Instead, the Court stated that the County was required to appeal its issued permit within LUPA time periods:

> To allow (the County) to challenge a land use decision beyond the statutory period of 21 days is inconsistent with the Legislature's declared purpose in enacting LUPA. Leaving land use decisions open to reconsideration long after the decisions are finalized places property owners in a precarious position and undermines the Legislature's intent to provide expedited appeal procedures in a consistent, predictable, and timely manner. 146 Wn.2d at 931.

Nykreim applies to the case currently before DPD. In this case, the City issued a building permit authorizing 20 units. The permit was issued on August 23, 2013. According to DPD's email below, the unit count reflects the unit count "for purposes of the SEPA exemption determination only" but DPD claims it was not otherwise applied in DPD's review for design review or density standards. DPD then "reprinted" the building permit to clarify the unit count to one unit on November 22, 2013.

DPD reprinted the building permit to reduce the number of units permitted in order to deny the project MFTE status. MFTE is only available for projects that produce 4 or more dwelling units. SMC 5.73.040.A.4. The applicant submitted its MFTE application months ago, and relied on information furnished by DPD regarding how it would consider the number of dwelling units. It has relied on the building permit that was issued for 20 dwelling units. DPD's reissuance of the building permit has now pulled the rug out from under our MFTE application which is critical to our project. The loss of MFTE results in a $300,000 loss to the project.

The Washington State Supreme Court's ruling in Nykreim and in subsequent cases does not allow DPD to "reissue" a building permit. The effect of the reissuance was purposeful, to deny the project the benefit of the MFTE. If DPD determined that the permit was issued in error, like in Nykreim, it was required to appeal its permit under LUPA. It did not do so, and the building permit issued in August for 20 dwelling units should be considered to be final, and it should be considered as 20 units for the project's MFTE application.

In sum, the reprinting of the building permit by DPD is neither supported by the Building Code nor state law. The building permit must be restored to 20 units which was the final decision by DPD, not appealed by any party. Thank you for reviewing our request for administrative review. We look forward to your response.

Sincerely,

Jessica M. Clawson

cc: Cheryl Mosteller, DPD
Andy McKim, DPD
Miriam Roskind, OH
Mike Kent, OH

Permit Number: 6356092

DISTRICT 3

CITY OF SEATTLE
Construction Permit

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

APN #: 092504-9230

Site Address: 4742 20TH AVE NE, SEATTLE, WA

Building ID: 000031863 - CONGREGATE RESIDENCE
Location:

Legal Description: BEG 91.78 FT N & 30 FT E OF SW COR OF N ¼ OF SE 1/4 OF SW 1/4 TH OF SEC 9-25-4 E THE E 100 FT TH N 45 FT TH W 100 FT TO 20TH AVE NE TH S...(see file)

Records Filed At: 4742 20TH AVE NE

OWNER
BOB MCCULLOUGH
6869 WOODLAWN AVE NE 110
SEATTLE, WA 98115
Ph: (206) 255-5119

CONTRACTOR

Application Date:	05/09/2013
Issue Date:	08/23/2013
Expiration Date:	02/23/2015
Fees Paid:	$12,439.25
As of Print Date:	08/23/2013

Description of Work: Construct congregate residence and establish use as a residential building and occupy, per plans.

Permit Remarks:

Building Code:	SBC 2009
DPD Valuation:	$983,534
Occupancy Cert Required:	Y
Special Inspections:	Y
Land Use Conditions:	N

Building Information:

Basements:	1
Stories:	4
Mezzanines:	0

Non-Separated Uses: Y

Residential Units this Permit:

Added:	20
Removed:	0
Total:	20

Site Final Required: Y

Zoning/Overlays:
Lowrise-3

Occupancy per Building Code

Floors	Type	Occupancy Group	Occupancy	Asmbly Load	Fire
All Floors	VA	R-2 Other	Congregate Residence.	N/A	13

Approved Use per Land Use Code

Use	Location
Congregate Res	

A/P #	Related Cases/Permits
6364740	Demolition Permit

Project Contacts	Name	Phone
Ordinance Reviewer	NOURI SAMIEE-NEJAD	(206) 733-9057
Structural Reviewer	CORNELL BURT	(206) 684-7844
Zoning Reviewer	CHRISTOPHER NDIFON	(206) 233-7938
Primary Applicant	MIKE PERRY	(425) 827-9293

Applicant Signature: _____ **Date:** 8/23/13

Permitted work must not progress without prior inspection approval. When ready for inspection, make request with the Department of Planning and Development at (206) 684-8900 or on the internet at: www.seattle.gov/dpd/permits/inspections/. **Provide the permit number, site address, and contact phone.** Permission is given to do the above work at 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. Correct information is the responsibility of the applicant. Permits with incorrect information may be subject to additional fees.

THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

PERMIT # 6356092

City of Seattle
Department of Planning and Development
700 Fifth Ave., Suite 2000

POST THIS SIDE OUT: THIS PERMIT MUST BE CONSPICUOUSLY POSTED AT THE WORK SITE

TO THE CONTRACTOR/OWNER,

Additional permits may be required for work occurring under this permit. This permit does not authorize Sewer, Public Right-of-Way Shoring, Drainage and Street Use, Fire Department, Boiler, Electrical, Elevator, Furnace, Gas Piping, Plumbing, or Sign permits. If other permits are required, they must be applied for separately from this permit. The requirements for all other permits related to this Permit, must be completed prior to the Final Inspection of this permit.

This Permits Final Inspection is required. The premises must not be occupied until the Final Inspection is provided and occupancy is authorized by the Seattle Department of Planning and Development.

ISSUED PERMIT STATUS: You can check the status of issued permits on the internet at: www.seattle.gov/dpd

INSPECTION REQUESTS: Please clarify which inspections your project requires before proceeding with your project.

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B) **24 hour inspection request line at (206) 684-8900**, cell phones are discouraged due to frequent connection problems.
C) **Customer Service at (206) 684-8950** between the hours of 7:30 AM and 4:30 PM.

BEFORE BEGINNING CONSTRUCTION:

A) Before **First Ground Disturbance**, request an inspection of installed **Erosion Control Measures**.
B) When there is **Special Inspections**, Land Use conditions, and/or unusual design elements, a **Pre Construction Conference** is required prior to construction. Call 684-8860 to request a Pre Construction conference.
C) If this permit requires a **Soil Bearing Capacity** special inspection by a Geotechnical Engineer, that approval is required **before** the foundation pour. The Building Inspector will accept the Geotechnical Engineer's approval **signature below**.
D) When **Special Inspections** are required, notify the Special Inspection Agency at least 24 hours in advance.

DURING CONSTRUCTION:

DPD inspectors will provide a copy of each inspection report. These reports must either be kept with this Permit, or kept together where they can be conveniently referenced. Request an inspection for the following installations:

PROPERTY LINES MUST BE ESTABLISHED BY SURVEY STAKES PRIOR TO SETBACK/FOUNDATION INSPECTION.

a.	**FIRST GROUND** (non distrubance areas, erosion control, tree protection)	f.	**INSULATION** (Slab, Walls, Ceiling)
b.	**SETBACK** (Location)	g.	**MECHANICAL COVER** (If HVAC is authorized by this permit)
c.	**FOUNDATION** (Footings, Walls) [Soil bearing, Reinforcing steel, Foundation drainage]	h.	**MECHANICAL FINAL** (If HVAC is authorized by this permit)
d.	**STRUCTURAL** (Shear Wall, HD's/Straps, Diaphragms)	i.	**SITE FINAL** (If required by this permit)
e.	**FRAMING** (Sub floor prior to sheathing, Walls, Ceiling)	j.	**FINAL INSPECTION** (After all other related permit requirements are completed)

PRIOR TO FINAL BUILDING APPROVAL:

Other permit approval sign-offs may be required prior to the Final Inspection of this permit. To speed-up Final approval of this permit, we recommend you acquire other permit final approvals in the signature boxes provided below.

SOIL BEARING Approved By Engineer / Date	**BOILER** Approved By / Date	**SEATTLE FIRE DEPARTMENT** Approved By / Date
ELECTRICAL Approved By / Date	**ELEVATOR** Approved By / Date	**LAND USE/DESIGN REVIEW** Approved By / Date
PLUMBING / GASPIPING / BACKFLOW Approved By / Date	**SITE / SIDE SEWER** Approved By / Date	**SDOT - PRVT CONTRACT/ST. USE** Approved By / Date
MECHANICAL / REFRIGERATION Approved By / Date	**OTHER** Approved By / Date	**STREET TREES / ARBORIST** Approved By / Date

Permit Number: 6356092

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CONTRACTOR

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Total:	1

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Floors	Type	Occupancy Group	Occupancy	Asmbly Load	Fire
All Floors	VA	R-2 Other	Congregate Residence.	N/A	13

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Use	Location
Congregate Res	

A/P #	Related Cases/Permits
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6387092	Side Sewer
6393101	Post Issuance Submittal

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Structural Reviewer	CORNELL BURT	(206) 684-7844
Zoning Reviewer	CHRISTOPHER NDIFON	(206) 233-7938
Primary Applicant	MIKE PERRY	(425) 827-9293

Applicant Signature: **Date:**

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MECHANICAL / REFRIGERATION Approved By / Date	**OTHER** Approved By / Date	**STREET TREES / ARBORIST** Approved By / Date

Jessica Clawson

From: Mosteller, Cheryl <Cheryl.Mosteller@seattle.gov>
Sent: Monday, November 25, 2013 9:52 AM
To: mperry@dimensions.com
Cc: Jessica Clawson; bob@meridianbi.com; McKim, Andy; Roskin, Miriam; Kent, Mike
Subject: Permit 6356092
Attachments: Permit.pdf

Good Afternoon Mike,

I wanted to let you know that DPD became aware of an issue with the unit count reflected on permit 6356092. As such we have reprinted the permit with a corrected unit count that is consistent with the approved plans. The 20 units originally shown reflects the unit count for purposes of the SEPA exemption determination only, as under Director's Rule 12-2012 for congregate residences each bedroom in a congregate residence is counted as one-half of a dwelling unit for purposes of determining whether a development is exempt from SEPA review. A unit count of 20 was not otherwise applied in our review, for example for purposes of density standards or determining whether Design Review is required. The reprinting of the permit is for the purpose of clarifying the unit count, which could otherwise create confusion when the building is inspected. This does not in any way limit the right to build the structure as configured on the approved plans, or occupy it as a congregate residence, as proposed.

Thank you.

Cheryl Mosteller
Land Use Planner Supervisor
Department of Planning and Development
700 Fifth Ave, Suite 2000
Seattle, WA 98104-5070
cheryl.mosteller@seattle.gov
(206) 684-5048

EXHIBIT L

Jessica Clawson

From: Kent, Mike <Mike.Kent@seattle.gov>
Sent: Monday, December 23, 2013 8:38 AM
To: Jessica Clawson; bob@meridianbi.com
Subject: Juno - MFTE
Attachments: Juno MFTE Letter.pdf

Jessica and Bob,

Last week the letter we sent to you Bob regarding the MFTE decision for the Juno project was returned to our office, despite our having mailed it to the address listed on the MFTE application. We sent a copy of the letter to Jessica as well, and it appears she did receive it. I have attached a scan of the letter for your records.

Mike

Mike Kent
Community Development Specialist
City of Seattle Office of Housing
PO Box 94725, Seattle, WA 98124-4725
700 5th Ave, 57th Floor, Seattle, WA
O: 206.684.0262 | mike.kent@seattle.gov