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IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE
KING COUNTY, WASHINGTON

THE CITY OF SEATTLE, a municipal corporation,)	Civil Case No.: 09-031
)	
Plaintiff,)	AMENDED COMPLAINT FOR CIVIL
)	PENALTY, ENFORCEMENT OF TERMS
vs.)	OF ENVIRONMENTAL CRITICAL AREA
)	(ECA) COVENANT AND PERMANENT
PETER C. SALADINO AND JANE DOE)	CONDITIONS, AND ORDER OF
SALADINO, and their marital community;)	ABATEMENT
)	
Defendants.)	

Plaintiff, the City of Seattle (City), alleges:

I. PARTIES AND JURISDICTION

1.1 The City is a municipal corporation, organized and existing under Title 35 RCW.

1.2 PETER C. SALADINO AND JANE DOE SALADINO are the owners and/or persons responsible for the condition of the property at 6067 Atlas Place Southwest and the un-addressed property to the West, across Gordon Pl. SW, in Seattle, Washington and legally described as:

APN: 7935000600

PARCEL A: TRACTS 93 AND 94, SPRING HILL PARK, ACCORDING TO THE PLAT RECORDED IN VOLUME 12 OF PLATS, PAGE 14, IN KING COUNTY WASHINGTON; AND
PARCEL B: PORTION OF TRACT 14, AMENDED REPLAT OF A PORTION OF SPRING HILL VILLA TRACTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 9 OF PLATS, PAGE 67, IN KING COUNTY WASHINGTON.

1 1.3 The Defendants are also responsible for encroachments on the public right-of-way at
2 Beach Drive SW that runs adjacent to the property described in paragraph 1.2 of this Complaint.

3 1.4 Chapter 35.20 RCW provides that the Seattle Municipal Court has jurisdiction over the
4 subject matter and is the proper venue to adjudicate this case. This Court has jurisdiction over the
5 parties.

6 II. FACTUAL ALLEGATIONS

7 A. The Seattle Residential Code

8 2.1 Section 22.150.010 of the Seattle Municipal Code (SMC) provides that the City of
9 Seattle has adopted portions of the International Residential Code as the Seattle Residential Code.

10 2.2 Seattle Residential Code §R105.1 requires a building permit to erect, construct, enlarge,
11 alter, repair, move, improve, remove, change the occupancy of, or demolish any building or
12 structure in the City, or allow the same to be done. A permit is required for the erection of any
13 retaining wall or rockery that is over 4 feet in height.

14 2.3 Seattle Residential Code §R107.1 requires that all construction or work for which a
15 permit is required is subject to inspections by the building official. Section R107.2 provides that
16 it is duty of the property owner, the owner's authorized agent or the person designated by the
17 owner to do the work authorized by permit to notify the building official that work requiring
18 inspection is ready for inspection.

19 2.4 Seattle Residential Code §R103.5 subjects any person failing to comply with the
20 provisions of this code to a civil penalty.

21 2.5 Seattle Residential Code §R103.5.1 provides that any person violating or failing to
22 comply with the provisions of the Seattle Residential Code is subject to a civil penalty. This
23 subsection provides further that when a notice of violation is issued, a violation will be deemed to

1 begin, for purposes of determining the number of days of violation, on the date compliance is
2 required by the notice of violation.

3 2.6 Seattle Residential Code R§103.7 provides that the building official may seek legal or
4 equitable relief to enjoin any acts or practices and abate any conditions when necessary to achieve
5 compliance.

6 **B. Environmentally Critical Areas Regulations**

7 2.7 The City's critical areas regulations are codified in Chapter 25.09 of the Seattle
8 Municipal Code (SMC).

9 2.8 SMC 25.09.040 requires a permit prior to undertaking development on a parcel
10 containing an environmentally critical area or buffer. SMC 25.09.520 provides that "development"
11 includes all components and activities related to construction or disturbance of a site, including but
12 not limited to land disturbing activities or construction of a retaining wall.

13 2.9 SMC 25.09.460 subjects any person who violates or fails to comply with any provision
14 of Chapter 25.09 SMC to a civil penalty.

15 2.10 SMC 25.09.480 also authorizes the Director to seek legal or equitable relief to enjoin
16 any acts or practices and abate any condition that constitutes or will constitute a violation of Chapter
17 25.09 SMC.

18 **C. The Seattle Street Use Ordinance – Title 15 SMC**

19 2.11 Title 15 SMC regulates the use and occupation of the public streets and places within
20 the City of Seattle and prescribes civil penalties for failing to comply with this Code.

21 2.12 SMC 15.46.040 provides that an owner of property who contracts for construction,
22 and any general contractor responsible for the work, are responsible for preventing dumping,
23 spillage, washing or overflow, tracking or windblow of materials from or for the premises onto

1 an adjoining public place. If dumping, spillage, washing or overflow, tracking or windblow of
2 materials should occur, the owner and/or contractor shall promptly cause the same to be removed
3 and the public place cleaned. If the owner or contractor should fail to remove the material and
4 restore the public place, the owner and/or the contractor shall be liable to the City for the costs
5 thereof, together with a charge equal to 15% of the City's cost to cover administration expenses.

6 2.13 SMC 15.46.050 provides several rebuttable presumptions that, under certain
7 circumstances, debris in the public right-of-way is presumed to be from the construction site.

8 2.14 SMC 15.91.002 provides that violations of SMC Chapter 15.46 shall be enforced under
9 the citation or criminal provisions set forth in SMC Chapter 15.91.

10 2.15 SMC 15.91.016 provides that a person who violates the provisions referenced in SMC
11 15.91.002 is subject to a civil penalty, which may be mitigated as provided in SMC 15.91.010 and
12 15.91.012.

13 2.16 SMC 15.91.020 provides that the City may abate a violation of SMC 15.91.002 after
14 enforcement action taken pursuant to SMC Chapter 15.91.

15 2.17 SMC 15.91.022 provides that if a person or entity cited fails to pay a penalty, the City
16 may pursue collection in any other manner allowed by law.

17 2.18 SMC 15.91.026 provides that the Director may seek legal or equitable relief at any time
18 to enjoin any acts or practices that violate the provisions referenced in SMC 15.91.002 or abate any
19 condition that constitutes a nuisance.

20 **D. Code Violations on the Subject Property**

21 2.19 Defendant entered into an ECA covenant with permanent conditions for Parcel A of the
22 property, which was recorded on January 22, 2003. The ECA covenant provides that no land
23 disturbing activities shall occur except by permit in the steep slope area as defined in Chapter 25.09

1 of SMC. Further, the ECA covenant provides, "any violation of this Covenant is a violation of
2 Chapter 25.09 of the Seattle Municipal Code. In addition to such other remedies as may be
3 available in law or equity or under Chapter 25.09 of the Seattle Municipal Code... The City may
4 demand corrective action sufficient to cure the violation and including, without limitation,
5 restoration or remediation of the Covenant area and remediation of any improvement not permitted
6 by the City." Defendants remain in violation of the ECA Covenant and Permanent Conditions.

7 2.20 Defendant obtained a construction permit, Permit No. 6114086, to demolish a single
8 family residence and detached garage and construct a two story, with basement, single family
9 residence on the property.

10 2.21 Defendant was actively doing construction on the property when a slide occurred in
11 late 2007. The slide, which resulted in dirt and debris in the right-of-way, was caused by the
12 Defendant's construction activity.

13 2.22 Following the slide, Defendant placed ecology blocks in the right-of-way, to prevent
14 further sliding into Beach Dr. South.

15 2.23 On September 3, 2008, following an inspection, the Department of Planning and
16 Development (DPD) issued a Residential Code Notice of Violation (NOV), File No. 1017119, to
17 the Defendants.

18 2.24 The NOV identified several violations of Seattle Residential Code, including the
19 construction of a retaining wall and adding fill in a steep slope and potential slide Environmentally
20 Critical Area without a permit and inspections.

21 2.25 The NOV required compliance by October 3, 2008.

22 2.26 The Defendants' property at 6067 Atlas Place Southwest is located in an
23 environmentally critical area designated steep slope and Defendants did not obtain any permits for

1 the development on their property, including the retaining wall and fill, prior to construction as
2 required under SMC 25.09.040.

3 2.27 To date, the Defendants failed to comply with the NOV and have corrected the
4 violation.

5 2.28 On September 4, 2008, the Seattle Department of Transportation (SDOT) issued a
6 Street Use Warning, No. 20538, requiring the Defendant to maintain the public right-of-way
7 adjacent to his property, and to clear the sand and ecology blocks from the public right-of-way.
8 The Warning required compliance by September 19, 2008.

9 2.29 The Defendant removed the ecology blocks, but failed to clear the sand and other
10 debris from the right-of-way.

11 2.30 On October 14, 2008, SDOT issued a Notice of Violation (NOV), No. 30804,
12 requiring the Defendant to maintain the public right-of-way adjacent to his property and clear the
13 mud, and sand from the right-of-way. The NOV required compliance by October 29, 2008.
14 However, this type of violation must be enforced by citation, pursuant to SMC 15.91.002.

15 2.31 On February 18, 2009, SDOT issued a citation, Citation No. 30028, for debris in
16 public places in violation of SMC Chapter 15.46. The citation instructed the Defendants to
17 remove debris and landslide material from the public right-of-way.

18 2.32 On April 13, 2009, the Hearing Examiner affirmed the citation and ordered the
19 Defendant to pay a mitigated penalty of \$150.00.

20 2.33 Defendants have failed to comply with the Residential Code, the Environmentally
21 Critical Areas Code, and Title 15.

22 III. CAUSES OF ACTION: CIVIL PENALTIES

23 3.1 Seattle Residential Code §R103.5 provides that the Defendants are liable for a

1 cumulative civil penalty in an amount of up to \$500 per day for each violation, from the time the
2 violation began, until compliance is achieved.

3 3.2 SMC 25.09.460 provides that the Defendants are liable for a civil penalty in an amount
4 of up to \$500 per day for each violation, from the time the violation began, until compliance is
5 achieved.

6 3.3 Enforce the terms of the ECA covenant and permanent conditions entered into by
7 Defendants including specifically enforcing the Covenant, enjoining the violation of the covenant
8 and requiring removal of any unpermitted improvement and restoration or remediation of the
9 Covenant area to the condition that existed before the violation.

10 3.4 SMC 15.91.016 provides that the Defendants are liable for citation penalties and the City
11 may collect those penalties in any manner allowed by law.

12 3.5 SMC 15.91.020 provides that the City may abate a violation of SMC 15.91.002 after
13 enforcement action taken pursuant to SMC Chapter 15.91.

14 3.6 SMC 15.91.026 provides that the City is entitled to seek other legal or equitable relief.

15 IV. RELIEF REQUESTED

16 The City requests entry of an order that:

17 1. Directs the Defendants to comply with the requirements of the Residential Code, Title 15,
18 SMC Chapter 25.09, and the ECA Covenant and Permanent Conditions.

19 2. Enjoins the violation of the ECA Covenant and Permanent Conditions entered into by
20 Defendant and requires Defendants to, within 120 days of entry of judgment in this matter, take
21 corrective action sufficient to cure the violation and including without limitation, restore or
22 remediate the Covenant Area and remove any improvement not permitted by the City;

23 3. Awards the City penalties in the amount of \$500 per day for each violation of Residential

1 Code §§ R105.1 and R107, commencing October 3, 2008, until compliance is achieved;

2 4. Awards the City civil penalties in the amount of \$500 per day for each violation of
3 Chapter 25.90, commencing October 3, 2008, until compliance is achieved;

4 5. Grants an Order of Abatement, authorizing the City to enter upon the Defendants property
5 as described in Paragraph 1.2 of this Complaint, if necessary to abate the violations of Title 15, and;

6 6. Exempts the City of Seattle from providing security pursuant to RCW 4.92.080 and

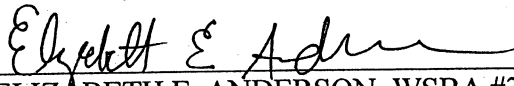
7 7. *Campbell v. Bellevue*, 85 Wn.2d 1, 530 P.2d 234 (1975);

8 8. Awards the City its costs and attorneys' fees; and

9 9. Grants other and further legal or equitable relief as the Court deems just and proper.

10 DATED this 21st day of May, 2009.

11 THOMAS A. CARR
Seattle City Attorney

12 By: 
13 ELIZABETH E. ANDERSON, WSBA #34036
Assistant City Attorney

14 Attorney for Plaintiff
15 The City of Seattle
16 600 Fourth Avenue, 4th Floor
17 P.O. Box 94769
Seattle, Washington 98124-4769
Phone: (206) 684-8202

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on this date, I caused to be served a true and correct copy of the foregoing document on the parties listed below in the manner indicated:

Keith W. Dearborn
Dearborn & Moss, PLLC
2183 Sunset Ave. SW
Seattle, WA 98116-2146

Counsel for Defendants

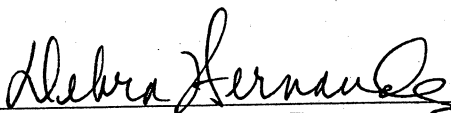
Peter C. Saladino and Jane Doe Saladino

☐ Messenger

☒ U.S. Mail (postage prepaid)

the foregoing being the last known address of the above-named parties.

DATED this 27th day of May, 2009, at Seattle, Washington.


DEBRA HERNANDEZ