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KING COUNTY
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CASE NUMBER: 18-2-27520-2 SEA

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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

SUSAN GEMMEL, PETER SCHMITZ and
LISA AMMON,

Petitioners and Plaintiffs,

v.

CITY OF SEATTLE and RALPH NEIS and
LOW INCOME HOUSING INSTITUTE,

Respondents and Defendants,

No. _____

**LAND USE PETITION and
COMPLAINT FOR DECLARATORY
RELIEF**

Petitioners allege as follows:

1 **FACTS**

2 1. Petitioners and Plaintiffs Susan Gemmel, Peter Schmitz and Lisa
3 Ammon all live and own property within close proximity to the activities
4 authorized by the City's land use decision being challenged herein.

5 2. The Respondent and Defendant City of Seattle (City) issued a
6 construction permit which is the land use decision (Decision) being challenged
7 herein. The City is a municipality of the State of Washington. The City is the
8 owner of the property at issue.

9 3. Defendant Ralph Neis and the Low Income Housing Institute (LIHI)
10 are the applicants for the permit at issue herein and Respondents in this action.

11 **JURISDICTION AND VENUE**

12 4. This Court has jurisdiction over this matter under Article IV,
13 Section 6 of the Washington Constitution because jurisdiction has not been
14 vested exclusively by law in some other court.

15 5. Venue is proper in this Court because Petitioners and Respondents
16 reside in King County and the property affected by the decisions and actions at
17 issue herein is in, and the cause of action arose in, King County.

18 **FIRST CAUSE OF ACTION:**
19 **LAND USE PETITION**

20 6. Petitioners incorporate by reference each and every allegation
21 contained in Paragraphs 1 through 5 inclusive as though set forth in full here
22
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1 7. Petition. Pursuant to the Land Use Petition Act (LUPA), chapter
2 36.70C RCW, Petitioners submit this land use petition and specifically allege the
3 following pursuant to RCW 36.70C.070:

4 8. Petitioner Susan Gemmel's name and mailing address is as follows:

5 Susan Gemmel
6 900 Aurora Avenue N, #601,
7 Seattle, Washington, 98109

8 9. Petitioner Peter Schmitz's name and mailing address is as follows:

9 Peter Schmitz
10 900 Aurora Avenue N, #202,
11 Seattle, Washington, 98109

12 10. Petitioner Lisa Ammon's name and mailing address is as follows:

13 Lisa Ammon,
14 435 Dexter Avenue N, #403
15 Seattle, WA 98109

16 11. Petitioners' Attorney: The following is Petitioners' attorney:

17 Richard M. Stephens, WSBA #21776
18 Stephens & Klinge LLP
19 601 108th Avenue NE, Suite 1900
20 Bellevue, Washington 98004
21 (425) 453-6206

22 12. Local Jurisdiction, Name and Address. The local jurisdiction whose
23 Decision is at issue is the Respondent City of Seattle. The mailing address for the
City is as follows:

 City of Seattle
 Department of Construction and Inspections

1 700 Fifth Avenue, Suite 2000
2 Seattle, WA 98124

3 13. Applicants for Land Use Decision at Issue. The Applicants for the
4 Decision at issue are Ralph Neis and the Low Income Housing Institute. The
5 mailing address for Mr. Neis and the Low Income House Institute is:

6 2407 1st Avenue Suite 200
7 Seattle, WA 98121

8 14. Identification of Decision Making Body and Decision. This land use
9 petition seeks review of a final decision by the City, granting a construction
10 permit on October 19, 2018. A copy of this Decision is attached hereto as Exhibit
11 A.

12 15. Identification of Parties Under RCW 36.70C.040(2)(b) through (d).
13 Subsections (b) through (d) of RCW 36.70C.040(2) provide that certain persons
14 are to be included as parties to the review of the land use petition. No other
15 persons appear to be required to be named parties. If Respondents believe that
16 another party is needed for just adjudication of this petition, Respondents should
17 notify Petitioners of this immediately pursuant to RCW 36.70C.050.

18 16. Petitioners' Standing: Petitioners have standing for the following
19 reasons. Petitioners Gemmel, Schmitz and Ammon have standing because they
20 reside in close proximity to the site where the activity which the City authorized
21 will be located. They are injured by the City's failure to follow its own code and
22 failure to follow the requirements of the State Environmental Policy Act by the
23

1 authorization of an activity or activities which affect the area in which they reside,
2 work, recreate and own property. The Decision affects their environment and the
3 required safeguards to their interests were not followed.

4 17. Concise Statement of Alleged Errors. The City issued the Decision
5 authorizing the applicants to build and operate a transitional encampment. The
6 Decision improperly ignores the requirement in Seattle Municipal Code (SMC)
7 Section 23.42.056F that limits transitional encampments in the City to three.
8 Additionally, the permit expires on April 19, 2020, which is beyond the time
9 allowed for transitional encampments.

10 18. SMC 23.76.006 requires a Master Use Permit (MUP) for transitional
11 encampments. From the City's information on its website, it appears that it did
12 not issue any MUP for this project.

13 19. SMC 23.42.056 governs transitional encampments, including the
14 requirement for an encampment operations plan, for the operator to be included
15 in the qualified encampment roster prepared by the Human Services Director, for
16 liability insurance, for indemnification for the City, and for various health and
17 safety requirements. Petitioners are informed and believe the City has approved
18 the transitional encampment without compliance with these requirements.

19 20. SMC 23.42.056A authorizes the Director of Human Services to
20 establish rules for transitional encampments and compliance with those rules is
21 mandatory under SMC 3.06.040. Director's Rule 9-2016 provides specifics on the
22 community outreach and community advisory committee. Petitioners believe the
23

1 City has authorized the transitional encampment without compliance with the
2 Director's Rule.

3 21. The City's Decision was handled as a Type I land use decision under
4 SMC section 23.76.004. The Decision was processed as a Type I decision which
5 was done administratively with no notice, opportunity to comment or a
6 disinterested decision maker. However, this proposal is not exempt from review
7 under the State Environmental Policy Act (SEPA). It is not categorically exempt
8 under SMC 24.05.800B or under any other categorical exemption. In issuing its
9 Decision, the City failed to undertake the required environmental review.
10

11 22. SMC 23.42.056 contains numerous requirements for approval of
12 transition encampments, including the requirement that the operator conduct
13 community outreach prior to making application, establishing a community
14 advisory committee, complying with an operations plan and being on the
15 qualified encampment roster by the Human Services Director. Because the
16 process by which the Decision was approved did not include any public notice or
17 administrative hearing, Petitioners have not had access to proof that these or any
18 requirements were met before the City issued the Decision. Petitioners reserve
19 the right to assert additional errors once the records related to this Decision are
20 produced.

21 23. The City's Decision is the result of an unlawful procedure and
22 failure to follow a prescribed process under RCW 36.70C.130(1)(a); is an
23 erroneous interpretation of the law under RCW 36.70C.130(1)(b); is not

1 supported by evidence that is substantial when viewed in light of the whole
2 record below under RCW 36.70C.130(1)(c); and is a clearly erroneous application
3 of the law to the facts under RCW 36.70C.130(1)(d).

4 24. Concise Statement of Facts. Petitioners allege the following facts:
5 Petitioners incorporate by reference the facts stated in Paragraphs 1 to 23 above.

6 24. Petitioners believe that on October 16, 2018, Applicants filed for a
7 permit. The City Department of Construction and Inspections issued a
8 Construction Permit No. 6670671-CN on October 19, 2018. Petitioners have seen
9 no documents related to this permit, other than the permit itself which was
10 available on the City's website.

11 25. SMC 23.42.056 allows a Type I Master Use permit to be issued for a
12 transitional encampment interim use subject to several criteria. One criterion is
13 compliance with community outreach standards. SMC 23.42.056 A.1.a.
14 Petitioners believe the applicants failed to comply with this requirement.
15 Subsection b requires the establishment of a Community Advisory Committee
16 which includes one individual identified by each stakeholder group in the
17 geographic area where the proposed encampment would be located as best suited
18 to represent their interests. Petitioners believe the applicants failed to comply
19 with this requirement.
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21 27. Request for Relief. Petitioners request all relief to which they are
22 entitled under LUPA. The Court should reverse the City's Decision to grant the
23 construction permit and/or allow a transitional encampment on this site.

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SECOND CAUSE OF ACTION

**Nuisance
RCW 7.248**

28. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1 through 27 inclusive as though set forth in full here.

29. Plaintiffs own property and reside in close proximity to 801 Aloha Street where the Defendants propose to operate an encampment for homeless people to reside without adequate services. Defendants' actions are injurious to the health, are offensive to the senses so as to essentially interfere with the Plaintiffs' comfortable enjoyment of the life and property.

30. Defendants' actions are unlawful and "annoys, injures or endangers the comfort, repose, health or safety of others" and "renders other persons insecure in life, or in the use of property" as provided in RCW 7.48.120.

31. Defendants should be enjoined from operating the proposed encampment for homeless people at 801 Aloha Street in Seattle.

THIRD CAUSE OF ACTION:

**Declaratory Relief under the Uniform Declaratory Judgment Act
(UDJA), RCW 7.24**

32. Plaintiffs incorporate by reference each and every allegation contained in Paragraphs 1 through 31 inclusive as though set forth in full here.

1 33. Plaintiffs are persons for purposes of the UDJA whose legal rights
2 are affected by Defendants' actions in regard to the property in their
3 neighborhood.

4 34. If and to the extent the City was not required to consider Plaintiffs'
5 interests in issuing the permit at issue, Plaintiffs are entitled to a declaration
6 from this Court that the City has acted illegally in approving the permit.

7 35. Defendants Neis and LIHI have applied for similar permits which
8 they and the City contend last only four weeks. Consequently, such permits
9 expire before the Court can rule on whether the permit was issued legally
10 through the normal judicial process set forth under the Land Use Petition Act.

11 36. Defendants Neis and LIHI are operating, or are preparing to
12 operate, a transitional encampment without compliance with City codes and
13 rules.

14 37. Plaintiffs and Defendants dispute whether issuance of the permit
15 and operating a transitional encampment at the site at issue based on the
16 circumstances herein alleged is legal. Plaintiffs are entitled to a declaration from
17 this Court that Defendants LIHI, Neis and the City are in violation of the law to
18 the extent they are operating a transitional encampment for homeless persons at
19 the 801 Aloha Street site in Seattle.
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21 38. A ruling by this Court can resolve the issues between the parties.
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PRAYER FOR RELIEF

WHEREFORE, Petitioners and Plaintiffs now respectfully request the Court to award the following relief:

- A. An order consistent with request for relief set forth above in the Land Use Petition Act claim or to effectuate any other ruling of the Court determined after briefing and argument;
- B. A declaration from this Court that Defendants LIHI, Neis and the City are in violation of the law in processing a transitional encampment at 801 Aloha Street in Seattle.
- C. An injunction prohibiting Defendants from operating a transitional encampment at 801 Aloha Street in Seattle under the current circumstances.
- D. Costs and attorney fees in this action as allowed by law; and
- E. Such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 1st day of November, 2018.

STEPHENS & KLINGE LLP

By:

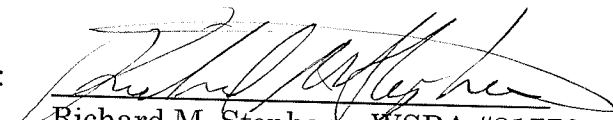

Richard M. Stephens, WSBA #21776
Attorneys for Petitioners and Plaintiffs

Exhibit A

Permit Number:
6670671-CN



CITY OF SEATTLE Construction Permit

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

APN #:	Site Address: 801 Aloha ST SEATTLE, WA 98109 Building ID: Location: Legal Description: ALL OF BLK 8, EDEN ADDN & THT PTN OF LTS 1-4, BLK 80 LY W OF ALLEY DEEDED TO Records Filed At: 802 ROY ST
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OWNER RYAN KENNEDY CITY OF SEATTLE FAS 700 5TH AVE, SUITE 5200 P.O. BOX 94689 SEATTLE, WA 98124-4689 Ph: 206-684-5763	CONTRACTOR	Application Date: 10/16/2018 Issue Date: 10/19/2018 Expiration Date: 04/19/2020 Fees Paid: \$544.50 As of Print Date: 10/19/2018
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Description of Work: Temporary use to allow a transitional encampment for 22 - 26 people on property owned by the City of Seattle. The proposal includes tent spaces, portable toilets, an outdoor kitchen, and related accessory facilities. The anticipated duration for the encampment is 4-weeks from 10/19/18 to 11/15/18

Permit Remarks:

Building Code: 2015 SBC SDCI Valuation: \$0 Occupancy Cert Required: N Special Inspections: N Land Use Conditions: N Non-Separated Uses: N	Site Final Required: N	Building Info: Basements: Stories: Mezzanines	Housing & Dwelling Unit this Permit:	Zoning/Overlay: SM-SLU 100/95 Council District 7 DESIGN_REVIEW_GUIDELI URBAN_VILLAGE Yes, LANDMARK Yes, on site, Additional Information on File
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Occupancy per Building Code						Approved Use per Land Use Code	
Floors	Type	Occupancy Group	Occupancy Type	Asmby Load	Fire	Use	Location

A/P #	Related Cases/Permits	Project Contacts	Name	Phone
6668333-CN	Construction Permit			

Applicant Signature: _____ **Date:** _____

Permitted work must not progress without prior inspection approval. When ready for inspection, make request with the Seattle Department of Construction and Inspections 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.

You Must Have a Paper Copy of Your Approved and Stamped Plan Set Available at Your Job Site for the City Inspector to Review. If You Do Not Have Your Plans Printed and Ready for Review, You May Fail Your Inspection.

POST THIS SIDE OUT:

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 Construction and Inspections.

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:

Seattle DCI 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 disturbance 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 _____ 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 _____