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January 23, 2006

Mayor Nickels
Seattle City Hall 600
Fourth Avenue, 7th Floor
PO Box 94749
Seattle, Washington 98124-4749

Re: Bertschi School and Code Compliance

Dear Mayor Nickels

This letter returns to an especially important and sensitive community and urban development matter – the Bertschi School. While most of the headlines surrounding this matter have targeted the schools very aggressive expansion plans, the focus of this correspondence is on current operations. This private institution repeatedly fails to operate within the prescriptive codes established under Title 23, the Land Use Code for the City of Seattle. And there is an equally burdensome issue, the failure of the City to investigate and thereafter pursue corrective action to a long list of code compliance complaints that have been filed with the Department of Planning and Development (DPD). Nearly 5-1/2 months have passed with little or no action. We feel the City has truly let our community down and we are looking to you for assistance.

This once small daycare center of 45 children has now morphed into a full-fledged private elementary school with 220 students. It has managed to shoehorn itself into this old and established residential area of the City. Our urban infrastructure was neither designed nor developed to accommodate such an invasive institution. Yet Bertschi continues to expand, to enhance its facilities and to bolster its enrollment well beyond our wildest expectations. From all indications the current planning and development review process lacks the comprehensive perspective to address such growth. We challenged the school's latest expansion project via an appeal to the Hearing Examiner that started in March and culminated in mid-October of 2005. While some relief was obtained in acoustical abatement of playground noise the remaining and long-standing impacts regarding traffic congestion, parking, public safety, depreciation of a residential community, and the loss of affordable housing all continue to be magnified. With little other recourse we have been forced to appeal this project even further, and have filed an appeal with the Superior Court. This case is scheduled to be heard in late March of this year.

The aforementioned code compliance complaints are really a byproduct of our preparation for the appeal to the Hearing Examiner. From the outset we recognized the need to have a comprehensive understanding and documented history of the school's development. Our legal counsel at the time guided us in an investigation to establish whether or not the school's existing operations were operating in accordance with Title 23. What we uncovered was truly astonishing. In numerous instances the school has been operating well beyond existing permits, well outside the Land Use Code, and way beyond the limits of formal Agreements established with both the City and members of the neighborhood. The full spectrum of these findings was presented in our opening remarks to the Hearing Examiner. The Hearing Examiner chose to adopt a very narrow focus, and ruled that the appeal could only deal with the proposed expansion project and not on the current operations of the school. By order and decision of the Hearing Examiner all matters related to Code compliance of existing operations were excluded from the proceedings and were to be presented to DPD for code enforcement. Following this order we transposed all of our Hearing Examiner arguments into a set of 12 individual code compliance complaints following the protocol specified by DPD. A very brief summary of each has been attached for your convenience.

All of these complaints are well documented. They have been keenly and completely researched, and the reference documents are included in a master set that serves all complaints. The material is well indexed and has been attached to the code compliance complaint package and to all subsequent addendums and submittals. We have assembled well over 160 reference documents encompassing over 2000 pages that include copies of project applications, governmental reviews and decisions, architectural drawings and site plans, studies, reports, photographs, and even two audio/visual DVDs. Most of the reference material was obtained from the DPD Microfilm Reference Library while other material was obtained via three separate Public Disclosure Requests to DPD. In some instances reference material had to be developed by the research effort itself (such as an exhaustive set of Traffic Studies). But in all cases the source material can be easily verified and authenticated. From the outset we have attempted to provide the copies of all this material to the City Law Department and the school's counsel given the potential impact on the Hearing Examiner appeal. We filed the complaints on August 12, 2005.

Current Status of Complaints

- Elapsed time to date: 162 days.
- Action taken to date by DPD: assignment of a case number, designation of a principal investigator, and one site visit – actions that somehow took one month to complete.
- Last recorded activity: September 16, 2005 (See <http://web1.seattle.gov/DPD/permitstatus/Project.aspx?id=1006446>)
- Date of last request for status update: January 17, 2006 (See attached letter which includes a detailed chronology of events/actions following submission)

Our challenge all along has been to develop both the facts and the documentation before we presented the City with a request for enforcement. We are confident that we have met this challenge. We have carefully followed the code violation reporting process and have even provided very detailed suggestions on how to resolve the school's non-compliant posture. These are serious violations that have already caused immeasurable impact on our neighborhood. The injurious impacts related to traffic, parking, congestion, noise, safety and the depreciation of residential character are things we in this community have lived with on a daily basis. It is very evident that Code and permit enforcement can provide considerable relief. Some of the violations have seemingly straightforward fixes (move or remove a piece of playground equipment located within the prescribed setback area) while others have more complex fixes. But none is without solution and in many cases a suggested solution is proposed. Timing and due diligence are critical. The Director has the mandate from the Seattle Municipal Code to act promptly.

It is the obligation and the duty of the Director of DPD to investigate and to enforce the provisions of Title 23. This should not be debatable. And by law the school must respond promptly in return. But the ball is now in DPD's court and has been there for nearly 5-1/2 months without any significant response. Our counsel has now outlined a proposal for pursuing "extraordinary remedies" to influence DPD but we are looking for a less invasive maneuver. We are looking to you for your leadership to instruct the Director of DPD to promptly investigate and then enforce a plan to correct these longstanding violations.

We would like to think that our neighborhood deserves better from its City's administrative departments. We look forward to your decisive action.

Sincerely,

Larry K. Hettick
Spokesperson, Friends of North Broadway District

Attachments

1. Summary of Code Compliance Complaints, The Bertschi School
2. Letter to Department of Planning and Development, January 17, 2006