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KING COUNTY  
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CASE NUMBER: 13-2-14836-6 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

MAPLE LEAF COMMUNITY  
COUNCIL EXECUTIVE BOARD,

Petitioner,

v.

CITY OF SEATTLE, DAN DUFFUS,  
and SOLEIL DEVELOPMENT, LLC,

Respondents,

and

DAN WICK, KIRK CHRISTIANSON,  
CONFLUX ARCHITECTURE and  
ERIK EKSTROM GROUND  
EVOLUTION, LLC,

Potentially Interested  
Respondents.

NO.

LAND USE PETITION

Petitioner Maple Leaf Community Council Executive Board (Petitioner) submits  
the following in support of a Land Use Petition under the Land Use Petition Act, RCW  
36.70C.

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1. Name and Address of Petitioner

Maple Leaf Community Council Executive Board  
Attn: David Miller, President  
PO Box 75595  
Seattle, WA 98175

2. Name and Address of Petitioner’s Attorney

David S. Mann  
Gendler & Mann, LLP  
1424 4<sup>th</sup> Ave. Suite 715  
Seattle, WA, 98101  
206-621-8869

3. Name and Address of Local Jurisdiction

City of Seattle  
600 Fourth Avenue  
Seattle, WA 98124

4. Decision Making Body and Decision

The decisions being appealed are building permits granted on March 8, 2013, for four residential units located near the northwest corner of NE 89<sup>th</sup> Street and Roosevelt Way NE in the Maple Leaf neighborhood of Seattle. The decision-making body is the Seattle Department of Planning and Development (“DPD”) under permit numbers 6321574 and 6325824, copies of which are attached as Exhibit A.

5. Persons to be Named Pursuant to RCW 36.70C.040.2.b-d

Dan Duffus  
Soleil Development, LLC  
300 Queen Anne Ave, North #369  
Seattle, WA 98109

1           6.     Additional Potentially Interested Parties

2           Dan Wick  
3           CWLLC  
4           5512 First Avenue NE  
            Seattle, WA 98105

5           Kirk Christianson  
6           Conflux Architecture  
7           5512 First Avenue NE  
            Seattle, WA 98105

8           Erik Ekstrom  
9           Ground Evolution, LLC  
10          PO Box 55309  
            (18978 Forest Park Drive NE)  
            Seattle, WA 98155

11          7.     Petitioner's Standing

12                   7.1     The Maple Leaf Community Council Executive Board  
13                   ("Community") is the duly elected representative body of the Maple Leaf Community  
14                   Council and is authorized to take legal action on behalf of the Maple Leaf Community  
15                   Council. The Maple Leaf Community Council is made up of members who own property,  
16                   operate businesses, and/or reside in the Maple Leaf community, including owners of  
17                   property, business operators, and residents in the immediate vicinity of the proposed  
18                   developments. The Community brings this action on behalf of its members.  
19

20                   7.2     The Community will be significantly aggrieved and adversely  
21                   affected by the lack of Design Review and/or SEPA Review on the proposed  
22                   developments. These developments are in the heart of the Roosevelt Way NE Maple Leaf  
23                   Business District. The Community, including its individual members, residents, and  
24                   owners, will be prejudiced or are likely to be prejudiced from the lack of Design Review  
25  
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1 and/or SEPA Review that could result in construction breaking up the Maple Leaf  
2 Business District in this area.

3 7.3 As neighboring residents, DPD was required to consider and protect  
4 Petitioner's interests.

5 7.4 Judgment in favor of the Petitioner will substantially eliminate or  
6 redress the prejudice to the Petitioner.

7 7.5 Petitioner has exhausted its administrative remedies.

8 8. Concise Statement of Errors

9 8.1 DPD's issuance of permits for four units on this site without Design  
10 Review is clearly erroneous because it fails to follow Seattle Municipal Code (SMC)  
11 23.41.004.A.1 (Table A) requiring Design Review in NC-2 zones for any project with four  
12 or more units.  
13

14 8.2 DPD's issuance of permits for the four units on this site without  
15 SEPA review is clearly erroneous because it fails to recognize the SEPA exemption  
16 contained in Seattle Municipal Code (SMC) 25.05.800 (Table A) is not applicable because  
17 more than four units are being constructed in this NC-2 zone.  
18

19 8.3 DPD's issuance of permits for the four units on this site without  
20 SEPA review is clearly erroneous because it fails to recognize that the permits on this site  
21 are physically and functionally related to pending applications on the adjacent two  
22 properties and together both exceed the allowed categorical exemption and will have a  
23 probable significant adverse environmental impact.  
24

1           8.4    DPD's issuance of permits without conformance to requirements  
2 related to "substantial development" in the Northgate Overlay District as required by  
3 SMC 23.71 is clearly erroneous.

4           8.5    DPD's issuance of permits without conformance to parking  
5 requirements specific to the Northgate Overlay (SMC 23.71.016) is clearly erroneous.

6           9.     Concise Statement of Facts

7  
8           9.1    On June 29, 2012, DPD accepted permit filings for two two-unit  
9 buildings under DPD Project #6321574 (Building A, the NE building facing Roosevelt  
10 Way NE) and #6325824 (Building B, the NW building on the 'back' property line). These  
11 two filings are part of an overall development of 13 units located at the corner of NE 89th  
12 Street and Roosevelt Way NE. The applicable zoning is NC2-40. All 13 units share a  
13 western property line with property zoned Single Family (SF). All 13 units are located  
14 within the Northgate Overlay.  
15

16           9.2    On November 6, 2012, DPD accepted permit filings for two two-  
17 unit buildings under DPD Project #6320796 (Building C, the center-east building facing  
18 Roosevelt Way NE) and #6341436 (Building D, the center-west building on the 'back'  
19 property line). The applicable zoning is NC2-40.  
20

21           9.3    On November 8, 2013, DPD accepted permit filings for one three-  
22 unit building and one two-unit building under DPD Project #6318864 (Building E) and  
23 #6341809 (Building F). The applicable zoning is NC2-40.

24           9.4    On March 8, 2013, DPD issued building permits for #6325824 and  
25 #6321574 without Design Review, SEPA review, and/or proper conformance to rules  
26 relating to the project's location in the Northgate Overlay area.  
27

1           9.5    Project #6321574 includes permitting for the construction of a  
2 10-foot curb cut off Roosevelt Way NE necessary to access a driveway to provide parking  
3 for Building A. Vehicular access for Building B under #6325824 is functionally  
4 dependent on the curb cut permitted under Project #6321574.

5           9.6    Project #6321574 and #6325824 were permitted as sharing the same  
6 city sewer line connection and the same water line connection at the street, making them  
7 functionally related.  
8

9           9.7    In a series of emails on January 17, 2013 between the Community  
10 and DPD, DPD Planner Samantha Upthegrave noted that, while each structure on the site  
11 has a separate permit number, "...all the plans and review happen under a primary number  
12 for each lot." The same email thread shows that Project #6321574 is considered the  
13 "Primary" permit and #6325824 is considered the "Secondary" permit. The public record  
14 for #6325824 notes the "Review and Process for two A/P under 6321574", which  
15 reinforces the fact that all review and processing for this record happens under a single  
16 process within DPD. (See Exhibit B.)  
17

18           9.8    DPD's EDMS system used by the public to retrieve documents  
19 related to a specific permit or development indicates all 13 units are "Related Development  
20 Sites".  
21

22           9.9    DPD violated City codes requiring Design Review for this four-unit  
23 development. The Seattle Building Code (SBC) explicitly defines live/work units as  
24 Dwelling Units. The Seattle Municipal Code (SMC) 23.41.004 defines the threshold for  
25 Design Review in NC2 zoning as four "Dwelling Units" or 4,000 square feet of  
26 non-residential gross floor area.  
27

1           9.10   DPD violated City codes requiring SEPA review for this  
2 development. For purposes of SEPA review (but not for Design Review), DPD calculates  
3 live/work units as non-residential. Taken together, this development contains 4,884 square  
4 feet of live/work space. This exceeds the SEPA exemption contained in SMC 25.05.800  
5 (Table B).

6           9.11   Seattle SEPA regulation SMC 25.05.305.A.2.b precludes use of a  
7 SEPA categorical exemption where the proposal is a segment of a proposal that includes:  
8

9                   A series of exempt actions that are physically or functionally related  
10                   to each other, and that together may have a probable significant  
11                   adverse environmental impact in the judgment of an agency with  
                    jurisdiction.

12           Permit numbers 6321574 and 6325824 are clearly physically related. All units are located  
13 on a contiguous parcel. The record indicates no intent by the Respondents to develop these  
14 as anything other than a single project. DPD itself states that all plans and reviews happen  
15 under a single project number. The sites are clearly functionally related because access to  
16 Building B is dependent on a curb cut permitted for Building A.  
17

18           9.12   Permit numbers 6321574 and 6325824 are also physically and  
19 functionally related to the nine units (thirteen in total) proposed on the adjacent two  
20 parcels. The architect and baseline exterior designs are the same. The initial application  
21 had all six buildings sharing the same driveway. The plans identify the four buildings  
22 sequentially A-F instead of treating them as unrelated. The plans describe the “urban  
23 garden” feature as sharing “the public frontage [with the] adjacent lots” to satisfy the  
24 requirements of SMC 23.71.014.B and SMC 23.71.014.C. DPD’s EDMS system shows  
25 they are “Related Development Sites”. Buildings A, B, C, and D share the same entrance  
26  
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1 off Roosevelt Way NE. Indeed, the record indicates no intent by the applicants to develop  
2 these as anything other than a single project. The applications were intentionally  
3 segmented in order to try and avoid SEPA and Design Review thresholds.

4           9.13 The cumulative effect of all pending applications, when viewed  
5 together, will have a probable significant adverse environmental impact. By setting the  
6 categorical exemption at four dwelling units or 4,000 square feet in the NC2 zone, the City  
7 has recognized that anything more than four dwelling units or 4,000 square feet may have a  
8 probable significant adverse environmental impact. Here, the cumulative effect of the  
9 combined projects far exceeds the four dwelling unit/4,000 square foot threshold. The  
10 City's SEPA policies confirm that the height, bulk, and scale of development should be  
11 reasonably compatible with the surrounding neighborhood. One of the ways this policy is  
12 addressed is through the Design Review process. By intentionally avoiding Design  
13 Review, the applications necessarily fail to meet the City's SEPA policies for height, bulk,  
14 and scale.  
15  
16

17           9.14 This project is located in the Northgate Overlay District and, at  
18 greater than 4,000 square feet of new construction, represents a "substantial development"  
19 as defined in SMC 23.71.007. DPD should have required a transportation analysis plan to  
20 determine whether the Respondents would be required to implement a Transportation  
21 Management Plan under SMC 23.71.018.  
22

23           9.15 According to notations on the plan documents, meeting the  
24 requirements in SMC 23.71.014.B and SMC 23.71.014.C was accomplished by sharing the  
25 public frontage amongst all three projects.  
26  
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1           9.16 There is significant doubt whether the entire 13-unit development  
2 meets height, bulk, and scale compatibility requirements in the Northgate Neighborhood  
3 Design Guidelines for when NC2-40 development abuts single-family zoning.  
4 Determining this conformance is normally the province of Design Review, which was not  
5 completed for this project.

6           9.17 Parking requirements for the Northgate Overlay (SMC 23.71.016)  
7 require anywhere from 0.9 to 1.0 parking stalls per 1000 square feet. The live/work units  
8 in Buildings A and B contain 4,884 square feet of commercial space. The residential unit  
9 on site requires one parking space. DPD has only required one parking space as opposed  
10 to the 5-6 that are actually required by the code.

11           9.18 Permits 6321574 and 6325824 were taken through the approval  
12 process for the Seattle Department of Transportation (SDOT), Seattle Public Utilities  
13 (SPU), Seattle City Light (SCL), and the Seattle Fire Department (SFD) as a single  
14 four-unit project. Combined with DPD's statements on how they reviewed this project,  
15 this means all review that was applied was done assuming the four units were one project.  
16 Permits 6321574 and 6325824 were only considered separate in order to intentionally  
17 avoid Design Review and SEPA review.

18           9.19 Because of the lack of Design Review, SEPA, and compliance with  
19 provisions for the Northgate Overlay, waste and recycling pickup is wholly incompatible  
20 with the surroundings. On recycling day, 39 garbage, food waste, and recycling  
21 receptacles will be lined up along the busiest pedestrian section of the primary Business  
22 District in the Maple Leaf neighborhood. This is immediately adjacent to the award-  
23 winning Snappy Dragon restaurant and less than 50 yards away from the Maple Leaf Grill.  
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10. Relief Requested

Petitioner requests the following relief:

10.1 An order revoking the issued building permits and halting construction activity until the proper Design Review can be conducted.

10.2 An order revoking the issued building permits and halting construction activity until SEPA review can be conducted.

10.3 An order revoking the issued building permits and halting construction activity until the permits are properly modified to adhere to standards pertaining to "substantial developments" and other regulations pertaining to the Northgate Overlay District.


10.4 An order requiring DPD to conduct Design Review and SEPA review on all 13 units together.

10.5 Such other relief as the Court deems just and reasonable.

DATED this 27<sup>th</sup> day of March, 2013.

Respectfully submitted,

GENDLER & MANN, LLP

By:   
David S. Mann, WSBA No. 21068  
Attorneys for Petitioner

\\MLCCEB\King Co\20130327 LUPA Appeal FINAL

# EXHIBIT A

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<span style="font-size: 1.5em; font-weight: bold;">Department of Planning and Development</span>				<a href="#">Home</a>	<a href="#">About Us</a>	<a href="#">Contact Us</a>
Building a Dynamic and Sustainable Seattle				Diane Sugimura, Director		

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## Permit & Complaint Status

### Project # 6321574

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<b>Address</b>	8911 Roosevelt Way NE	<b>Permit Number</b>	6321574
<b>Location</b>		<b>Permit Status</b>	Permit Issued
<b>Records Filed At</b>	8901 Roosevelt Way NE	<b>Application Date</b>	Jun 29, 2012
<b>Application Type / Action Type</b>	CONSTRUCTION / NEW CONSTRUCTION	<b>Issue Date</b>	Mar 08, 2013
<b>Work Type</b>	FULL REVIEW (COMPLEX)	<b>Expiration Date</b>	Sep 08, 2014
<b>Category</b>	MULTIFAMILY	<b>Finalied Date</b>	
<b>King Co. Assessor's #</b>	510040-2506, DV0080196, DV0080197, DV0080198	<b>Owner</b>	<b>DAN DUFFUS</b> SOLEIL DEVELOPMENT 300 QUEEN ANNE AVE N #369 SEATTLE, WA 98109
<b>Zone/Overlays and ECA</b>	NC2-40, ARTERL, OVERNG, SP STR		
<b>Legal Description</b>	LOTS 4-6, ACRE 5, TRACT 31, MAPLE LEAF ADDN TO GREEN LAKE CIRCLE, LESS STREET	<b>Contractor</b>	<b>SOLEIL LLC</b> 300 QUEEN ANNE AVE N, #369 SEATTLE, WA 98109  <b>GENERAL CONTRACTOR LICENSE:</b> SOLEIL*953BR
<b>Description of Work</b>	Construct NE 2-unit live/work structure this permit and occupy, per plans. (Establish use as and construct 2-unit live work structure and duplex with attached garage and occupy, per plans (Review and Process for 2 A/P under 6321574).	<b>Permit Remarks</b>	Construct and maintain one 10' wide residential curbcut along Roosevelt, starting at the southern property line. PriorityGreen Expedited
<b>Related Permits</b>	6325824	<b>Related Land Use Permits</b>	
<b>Related Cases</b>			

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 [Reviews](#)  
 [Land Use](#)  
 [Fees & Receipts](#)  
 [Occupancy & Uses](#)  
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<b>Building ID</b>	NE TRIPLEX	<b>Total Units For This Building</b>	0
<b>Stories Above Grade Plane</b>	3	<b>Mezzanines</b>	1
<b>Stories Below Grade Plane</b>	0	<b>High Rise Building</b>	NO
<b>Occupancy</b>			
Floors/Area	Group	Occupancy/Use	Sprinkler Standard
			Const Type
			Assembly Load
			Sq Ft
			Non-Separated Group
			Comments

Floors/Area	Group	Occupancy/Use	Sprinkler Standard	Const Type	Assembly Load	Sq Ft	Non-Separated Group	Comments
all floors	R-2 LIVE WORK		13	VB	0	1495	Y	
all floors	R-2 APARTMENT		13	VB	0	1972	Y	

**Dwelling Units**

Type	Units Removed	Units Added	Comments
ACC LIVE WK	0	2	

**Approved Uses**

Location	Approved Uses	Sq Ft	Comments
	LIVE-WORK UNIT	0	

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Building a Dynamic and Sustainable Seattle <span style="float: right;">Diane Sugimura, Director</span>	

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## Permit & Complaint Status

**Project # 6325824**

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<b>Address</b> 8913 Roosevelt Way NE	<b>Permit Number</b> 6325824
<b>Location</b>	<b>Permit Status</b> Permit Issued
<b>Records Filed At</b> 8901 Roosevelt Way NE	<b>Application Date</b> Jun 29, 2012
<b>Application Type / Action Type</b> CONSTRUCTION / NEW CONSTRUCTION	<b>Issue Date</b> Mar 08, 2013
<b>Work Type</b> FULL REVIEW (COMPLEX)	<b>Expiration Date</b> Sep 08, 2014
<b>Category</b> MULTIFAMILY	<b>Finalied Date</b>
<b>King Co. Assessor's #</b> 510040-2506, DV0080196, DV0080197, DV0080198	<b>Owner</b> DAN DUFFUS SOLEIL DEVELOPMENT 300 QUEEN ANNE AVE N #369 SEATTLE, WA 98109
<b>Zone/Overlays and ECA</b> NC2-40, ARTERL, OVERNG, SP STR	
<b>Legal Description</b> LOTS 4-6, ACRE 5, TRACT 31, MAPLE LEAF ADDN TO GREEN LAKE CIRCLE, LESS STREET	<b>Contractor</b> SOLEIL LLC 300 QUEEN ANNE AVE N, #369 SEATTLE, WA 98109  <b>GENERAL CONTRACTOR LICENSE:</b> SOLEIL*953BR
<b>Description of Work</b> Construct NW duplex this permit and occupy, per plans. (Establish use as and construct live work triplex and duplex with attached garage and occupy, per plans (Review and Process for 2 A/P under 6321574).	<b>Permit Remarks</b>
<b>Related Permits</b> <a href="#">6321574</a>	<b>Related Land Use Permits</b>
<b>Related Cases</b>	

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<b>Building ID</b> NW DUPLEX: 8913	<b>Total Units For This Building</b> 2							
<b>Stories Above Grade Plane</b> 3	<b>Mezzanines</b> 1							
<b>Stories Below Grade Plane</b> 0	<b>High Rise Building</b> NO							
<b>Occupancy</b>								
Floors/Area	Group	Occupancy/Use	Sprinkler Standard	Const Type	Assembly Load	Sq Ft	Non-Separated Group	Comments

Floors/Area	Group	Occupancy/Use	Sprinkler Standard	Const Type	Assembly Load	Sq Ft	Non-Separated Group	Comments
all floors	R-3 DUPLEX		NONE	VB	0	3389	Y	
lower lvl	U PRIV GARAGE		NONE	VB	0	347	Y	

**Dwelling Units**

Type	Units Removed	Units Added	Comments
TOWNHOUSE	0	2	

**Approved Uses**

Location	Approved Uses	Sq Ft	Comments
	MULTIFAMILY RES	0	

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# EXHIBIT B



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**Date:** Thu, 17 Jan 2013 11:38:39 -0800 [01/17/2013 11:38:39 AM PST]**From:** Updegrave, Samantha <Samantha.Updegrave@seattle.gov> **To:** david.miller@mapleleafcommunity.org <david.miller@mapleleafcommunity.org> ,  
Portman, Cliff <Cliff.Portman@seattle.gov> **Subject:** RE: 89th and Roosevelt Development

And 3013793 was placed on hold and my understanding is that the applicant will cancel it.

--Samantha

-----Original Message-----

From: Updegrave, Samantha

Sent: Thursday, January 17, 2013 11:38 AM

To: 'david.miller@mapleleafcommunity.org'; Portman, Cliff

Subject: RE: 89th and Roosevelt Development

David -

I apologize for any confusion re: the building permit numbers. Each structure on a site has a separate permit number (which I believe is driven by a building code requirement), though all the plans and review happen under a primary number for each lot. The project numbers I provided initially are those primary ones. Here they are again with the additional numbers.

6320796 (primary) / 6341436 (secondary) @ 8909 Roosevelt Way NE  
 6321574 (primary) / 6325824 (secondary) @ 8911 Roosevelt Way NE  
 6318864 (primary) / 6341809 (secondary, filed under 852 NE 89TH ST because it is a corner lot);  
 demolition permit 6341811 @ 8901 Roosevelt Way NE

Not sure if you received the first email I sent this morning, so here it is again.

In the most recent iteration, 6320796 and 6321574 (at 8909 and 8911 Roosevelt Way NE) each proposed (2) live-work units and (2) townhouse units. 6318864 (at 8901) proposed (3) live-work units and (2) townhouses. These numbers may change or shift as the applicants respond to DPD corrections, but those are the numbers the last time we saw plans, which was in early December.

In short, the cumulative count the last time plans were submitted was (7) live-work units and (6) townhouse units.

--Samantha

-----Original Message-----

From: David Miller [mailto:david.miller@mapleleafcommunity.org]

Sent: Thursday, January 17, 2013 10:39 AM

To: Updegrave, Samantha; Portman, Cliff

Subject: Re: 89th and Roosevelt Development

Samantha -

Thanks. So let me see if I understand this...

6320796 - Build one 2-unit live/work  
 6321574 - Build one 2-unit live/work  
 6318864 - Build one 3-unit live/work.

So 6341809, 6341811 (which are mentioned on 6318864's page), 6325824, 3013793, and 6341436 (which is referenced on 6320796) are no longer active permits?

My confusion is that if I read those first three correctly that makes only 7 units and not the 10-15 I get (and Cliff gets) if I count other ways.

Thanks for helping me through this.  
David

-----Original Message-----  
From: Updegrave, Samantha  
To: Mr. David Miller  
To: Portman, Cliff  
Subject: RE: 89th and Roosevelt Development  
Sent: Jan 17, 2013 9:13 AM

David -

These are the active building permits.  
6320796 @ 8909 Roosevelt Way NE  
6321574 @ 8911 Roosevelt Way NE  
6318864 @ 8901 Roosevelt Way NE

--Samantha

-----Original Message-----  
From: David Miller [mailto:david.miller@mapleleafcommunity.org]  
Sent: Thursday, January 17, 2013 9:03 AM  
To: Portman, Cliff  
Cc: Updegrave, Samantha  
Subject: Re: 89th and Roosevelt Development

Cliff -

Thanks. Can you provide, or put me in touch with someone who could provide, all the currently-active project numbers for this development? I'm worried that the project map and search are missing some.

David  
-----Original Message-----  
From: Portman, Cliff  
To: Mr. David Miller  
Cc: Updegrave, Samantha  
Subject: RE: 89th and Roosevelt Development  
Sent: Jan 17, 2013 7:57 AM

Hi David. I do not have the plans in front of me. I recall the three projects each have two residential units and three live-work units.

-----Original Message-----  
From: david.miller@mapleleafcommunity.org [mailto:david.miller@mapleleafcommunity.org]  
Sent: Wednesday, January 16, 2013 1:24 PM  
To: Portman, Cliff  
Subject: 89th and Roosevelt Development

Cliff --

Can you tell me how many units are going in on the 89th and Roosevelt Development? I'm finding it hard to tell for sure.

Thanks,  
David

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David Miller  
President  
Maple Leaf Community Council Executive Board <http://www.MapleLeafCommunity.org>

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David Miller, President, Maple Leaf Community Council(Excuse the brevity & any typos - sent via BlackBerry)

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David Miller, President, Maple Leaf Community Council(Excuse the brevity & any typos - sent via BlackBerry)

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