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6 BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

7 In re: Appeal by

8 FREMONT NEIGHBORHOOD COUNCIL (No. W-17-014),  
9 Sub Nom  
10 **WALLINGFORD COMMUNITY COUNCIL,**  
**No. W-17-006**

11 of the City of Seattle Citywide Implementation of  
12 Mandatory Housing Affordability (MHA) Final  
Environmental Impact Statement.

Hearing Examiner Consolidated File:  
**W-17-006** through  
**W-17-014**

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**APPELLANT FREMONT  
NEIGHBORHOOD COUNCIL'S EX  
PARTE MOTION FOR A SUBPOENA**

Pursuant to Hearing Examiner Rule 3.12, Appellant Fremont Neighborhood Council (FNC) submits this *ex parte* motion for a subpoena to be issued to Robert Feldstein to testify in the above-referenced matter.

**I. NAME AND ADDRESS OF PERSON TO BE SUPOENAED**

Robert L. Feldstein:

Residence: 173 21st Avenue, Seattle, WA 98122

Business: Cedar River Group, 93 Pike St., Suite 315, Seattle, WA 98101

**II. DATE AND TIME OF TESTIMONY**

FNC requests that the subpoena for Robert Feldstein requires him to appear and testify at the hearing for this matter on Tuesday, September 4, 2018 at 9:00 a.m. or at such other time as he may be available in coordination with the hearing examiner's and other parties' schedules.

1 **III. SCOPE OF TESTIMONY**

2 FNC wishes to examine Mr. Feldstein as a rebuttal witness regarding:

- 3 • development of the proposed action (FEIS Sections 1.1, 2.1, and 2.2);
- 4 • development of the objectives of the proposed action (FEIS Section 1.2);
- 5 • development of alternatives to the proposed action to meet the objectives (FEIS Sections 1.4 and
- 6 2.3); and
- 7 • the application of SEPA to these processes and in relation to the “planning context” (FEIS
- 8 Section 1.3 and 2.2).

8 **IV. RELEVANCE OF TESTIMONY**

9 Robert Feldstein was hired by Mayor Ed Murray in early 2014, and took the position titled

10 Director of Mayor's Office of Policy and Innovation. The public record as well as City records

11 obtained by appellants in the course of this appeal indicate that Mr. Feldstein was one of Mayor

12 Murray’s top level managers—and possibly the lead manager for the Mayor’s Office—regarding the

13 HALA (“housing affordability livability agenda”) committee deliberations, the development of the

14 “planning context” policies adopted after his arrival, and the development of the MHA program and

15 its implementing policies and ordinances. Documents in the material produced by the City in response

16 to discovery indicate, *inter alia*:

17 1. Mr. Feldstein was involved in many strategy and policy meetings and conversations in the

18 Mayor’s Office, within the Executive agencies, between the Mayor’s Office and the Legislative

19 Branch, and between the Mayor’s Office and outside interests, including signatories to the “Grand

20 Bargain” publicly released on July 13, 2015. For example, COS0117361 is a May 1, 2015 “Policy

21 Briefing Memo” to the Mayor discussing HALA matters with representatives of the private

22 development sector, including a signer of the Grand Bargain 10 weeks later. This document is no. 71

23 on FNC’s Final Exhibit List and is attached in support of this motion.

1 2. Mr. Feldstein was directly involved in, or managed, the preparation of various documents  
2 implementing the Grand Bargain. For example, he and the head of the City Budget Office are the  
3 signers of the April 26, 2016 memorandum turning over the MHA framework legislation—creating  
4 SMC Chapter 23.58C—to the Mayor for submittal to the City Council.

5 3. Mr. Feldstein was closely involved with—if not the manager of—strategic considerations  
6 surrounding the entire process of policy development through the HALA process. FNC has included a  
7 series of relevant documents in its final exhibit list, as follows (with descriptions added):

8	59	Briefing and Discussion (no date or other title)	COS0079596.pdf
9	60	Illustration of MHA Performance Across High, Medium and Low Areas	COS0079598.pdf
10	61	Mandatory Housing Affordability —Program Key Policy Questions, DRAFT — 11/13/15	COS0079602.pdf
11	62	Mandatory Housing Affordability —Program Key Policy Questions, DRAFT — Updated through 11/20/15 policy decision making meeting.	COS0079614.pdf
12	63	Mandatory Housing Affordability —Program Key Policy Questions, DRAFT — 10/26/15	COS0079662.pdf
13	64	Minimum Performance Units Summary (no date)	COS0079666.pdf
14	65	Mandatory Housing Affordability —Program Key Policy Questions, DRAFT — Updated through 11/13/15 policy decision making meeting.	COS0079668.pdf

16 There are many more such documents that might well be admissible on rebuttal examination.

17 The City has scheduled witnesses to testify who will almost certainly counter appellants’  
18 arguments presented by their witnesses and exhibits that the EIS alternatives are adequate. Geoffrey  
19 Wentlandt and Richard Weinman are the most likely witnesses for the City on these subjects.

20 Mr. Feldstein will be able to respond on rebuttal to questions concerning the events discussed  
21 above and numerous similar events and related documents, and how they relate to the choosing of the  
22 EIS alternatives, and the exclusion of others, as well as to the City’s process for applying SEPA to the  
23 chosen policy path. These issues are directly relevant to FNC’s claim in its appeal that:

1 The City constrained the range of alternatives by improperly narrowing the definition of the  
2 objective (also called purpose and need) for the proposed action. This narrowing was  
3 accomplished in large part by segmenting SEPA consideration of the MHA framework (SMC  
4 chapter 23.58C) into a checklist and determination of non significance (DNS) dated June 8, 2015  
5 that fails to consider any of the likely impacts of the City's actions. That SEPA checklist and DNS  
6 explicitly disclaim any intent to pursue specific actions addressed in the FEIS at issue here.

7 FNC appeal, paragraph IV.2.B. Examination of Mr. Feldstein is also directly relevant to SCALE's  
8 appeal:

9 The FEIS's analysis of alternatives to the MHA proposal is inadequate. The alternatives that are  
10 provided do not include actions that could feasibly attain or approximate the proposal's objectives  
11 at a truly lower environmental cost or truly decreased level of environmental degradation. The  
12 stated objective of the MHA proposal is to create additional affordable housing, which MHA  
13 proposes to achieve through upzoning and funding development of rent-assisted housing. The  
14 FEIS then explicitly states that it will not be considering any alternatives to this specific means of  
15 addressing the city's need for more affordable housing for those who receive economic assistance  
16 and for those low and moderate income residents who do not qualify for rent assistance. The FEIS  
17 explicitly declines to consider specific alternatives to the MHA proposal, even though comments  
18 were presented suggesting alternatives that would have accomplished the proposal's stated  
19 objective. The FEIS alternatives only consider how much and where to up-zone, not alternative  
20 ways to reach the objectives. The FEIS admits that in all cases, the MHA upzoning variants which  
21 the FEIS proposes as alternatives will fail to achieve the stated objective, yet it fails to consider  
22 other alternatives at all.

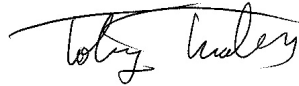
23 SCALE appeal, paragraph IV.2.17.

Due to Mr. Feldstein's apparently significant role, FNC listed him on its final exhibit list. The undersigned contacted Counsel for City of Seattle at the beginning of this week to request that Mr. Feldstein be made available for examination during appellants' rebuttal case after the close of the City's witnesses, scheduled for August 31. Counsel informed me that Mr. Feldstein no longer works for the City. That information was inconsistent with my knowledge; documents from the record produced by the City indicated Mr. Feldstein's continued involvement up to the date of document production.

1 A search for Mr. Feldstein on line disclosed that he now appears to work for the Cedar River  
2 Group, a consulting firm whose employees are listed as two of the six “HALA Staff” in the front of  
3 the July 13, 2015 HALA Report.

4 Therefore, for all of the above reasons it is reasonable for FNC to have Robert Feldstein appear  
5 before the Hearing Examiner to respond to questions regarding the development of the EIS and  
6 especially its alternatives, and the Examiner should execute the subpoena submitted herewith to  
7 compel his testimony. In the alternative, the Hearing Examiner should authorize the undersigned to  
8 execute such subpoena pursuant to Hearing Examiner Rule 3.12(e).

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10 DATED this 17<sup>th</sup> day of August, 2018.

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Toby Thaler, WSBA 8318