BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:	Hearing Examiner File WA-18-002
ELIZABETH CAMPBELL, ET AL,	APPELLANT CAMPBELL'S REPLY TO CITY OF SEATTLE'S 9/10/18 RESPONSE
Of the adequacy of an FEIS issued by the Director, Seattle Office of Housing	

DECLARATION AND STATEMENT OF FACTS

I, Elizabeth Campbell, declare as follows:

That I am over the age of 18 years and competent to be a witness herein:

The Motion for the continuance of the discovery period was in fact filed on August 24, 2018 with the Office of Hearing Examiner ("OHE"), albeit in an alternative manner, filed with the examiner's legal assistant Alayna Johnson. This was due to the fact that OHE had not issued to the Appellant access to OHE's e-filing system. This was an oversight by OHE, and not something known by the Appellant that direct OHE permission was required to file documents.

Despite the City's claims the Appellant in fact is not a seasoned participant in OHE cases or procedure and thus did not know about this granting of access to e-filing. In fact, the only documents that had been filed by the Appellant prior to the motion did not require explicit permission from OHE to be filed, thus the Appellant had no reason to believe that it needed to seek e-filing access.[1]

The same filing, the motion for continuance, was also sent on August 24th to the City via email, and via first class mail. Ms. Johnson has acknowledged receiving the same and that she likewise received copies of the transmission from Appellant to the City; see attached email exchanges re the transmission of documents related to the Motion for Continuance.

It was clearly set out in the motion and under oath that through no fault of the Appellant that this critical information which has direct bearing on this case came at a very late date in this matter – that is not something the Appellant had control over.

As noted in the motion – "Since the phone call Appellant has endeavored to confirm the information received through regular channels and without benefit of a legally compelling authority that would induce more prompt, transparent, and complete responses to her inquiries. Appellant requires the authority of discovery in this matter, including the Hearing Examiner's power to compel discovery."

And far from being speculative information, of no consequence to the question of the adequacy of the City's EIS as the City argued in its Response, the matter of at least the Talaris site's potential sale has been known by the City, that the property was on the market at least. That it has in fact been sold is an

[1] Despite the City's contention that the Appellant is a knowledgeable and very experienced participant in OHE's hearing process, in fact, of the three cases cited as evidence of Appellant's familiarity with OHE procedure, one, MUP-90-050 is not a case Appellant participated in, the other, MUP 17-037 was dismissed early on before any of the process for a OHE hearing had transpired, and in re. MUP 18-019, other than a pre-hearing conference and a pending motion to almost wholly dismiss that case, little in the way of procedure has occurred in that matter either.

important event in this matter before the OHE due to the fact that if this is true, and since the City/Housing has not identified or evaluated in the EIS any other off-site opportunities in addition to or in lieu of the Talaris site, then the EIS Alternatives 2 and 3 cannot meet the definition of "reasonable alternatives.", and by extension, without Alternative 3 the only alternative that would provide park space, the EIS utterly fails to address the adverse environmental impacts that development of hundreds of units of housing will have on some of the last remaining open space in the City. And as the Appellant has noted about that now multiple times to the City regarding its sole or imprudent reliance upon the Talaris site for its alternatives, "Without Alternatives 2 and 3, only preferred Alternative 1 and Alternative 4 of "no-action" remain.

SEPA mandates that the "no-action" alternative be evaluated and compared to the other alternatives. WAC 197-11-440(5)(b)(ii). The EIS must "[p]resent a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative." WAC 19-11-440(5)(b)(vi). An EIS that evaluates only a proposed Alternative and no-action alternative may be deemed inadequate for not analyzing a sufficient range of alternatives. Town of Woodway v. Snohomish Cty., 180 Wn.2d 165, 171, 322 P.3d 1219 (2014) ("growth board found that the county's EIS was faulty because it did not consider multiple alternatives . . . —the only alternative it considered was no change at all."); Davidson Serles & Assocs. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 159 Wn. App. 148, 152–53, 244 P.3d 1003 (2010) (noting that the Growth Board found an EIS inadequate because it did not analyze a sufficient range of alternatives)."

Therefore, taking the time to conclusively verify the fact that the Talaris site has been sold, and in contradiction to what the City is arguing that such a sale is of no importance to the process of determining the adequacy of its EIS, *it is in fact the reverse*. It is in fact of great importance to the case before the OHE; without the availability of the Talaris site the adequacy of the City's EIS fails.

Thus it is the Appellant that will actually be prejudiced if the continuance is not granted to engage in discovery related the ownership status of the Talaris site. As was noted in the motion for continuance, short of a subpoena to force the disclosure of the sale/ownership status of the Talaris site, it cannot be shown with certainty that it has been sold, *and* it is presumed the City will take advantage of that and argue at hearing as it has during the consideration of this motion that it is mere speculation that the Talaris site has been sold, that this ambiguity without evidence to the contrary means that the City's EIS is in fact adequate.

In regards to the City's back channel efforts to engage in talks to in fact find an alternative site to locate its preferred affordable housing complex on, it is quite telling that the City in its response to the motion for continuance only brushes off a highly reliable source's claims that this is in fact what is occurring with a mere quip that this is just "an unfounded claim".

Given that the City Attorney's Office has unqualified access to dispatch "an unfounded claim" with any number of authoritative affidavits from department heads and highly placed officials, elected and unelected, all of whom have every reason to resoundingly quash such an unfounded claim in order to protect and ensure the realization of a housing project that they have put their reputations and substantial City resources behind, it is highly telling that this was not done.

The City's response all but screams, "Yes, the City has been engaged in talks to locate the proposed housing project at another location within the City, *not* at Fort Lawton."

All the more reason that narrowly defined discovery should continue so that this activity can be brought to light for two reasons, one, if nothing else as an exercise in administrative/judicial economy – why take up all of the parties' time in this matter, the City's, the OHE's, the Appellants', over a moot situation; and two, it is in the interest of equity and justice to reach a reasonable, nay a responsible outcome. The purpose of OHE to be used as a forum whereby parties on either side of a matter use it to stall for time or to hash over situations that are not even relevant or viable at a certain point, as apparently the City wants to do.

In regards to not being sensitive to the availability arrangements of the City's vast array of consultants and retainers, far from it. As noted above, if in fact the EIS is not adequate on the basis of what should now can be easily shown, or if in fact the City has changed its approach or direction in this matter, why would the City want to put is people through a show-hearing process, particularly at great expense to "the City", in reality at great expense to the taxpayers?

CONCLUSION

Based on the arguments above and the record herein, the Appellant requests again that the Hearing Examiner grant its motion and extend the deadline for discovery, and by extension the witness and exhibit list submittal deadlines, and hearing schedule accordingly and consistent with the Hearing Examiner's schedule.

DATED this 12

th day of September, 2018.

ELIZABETH A. CAMPBELL

Appellant
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CERTIFICATE OF SERVICE

I, Elizabeth Campbell, declare as follows

That on September 12, 2018 filed the Appellant's Declaration above, email attachments, and this Certificate of Service with the Seattle Hearing Examiner using its e-filing system, and that on September 12, 2018 I also addressed said documents and deposited them for delivery as follows:

To the Hearing Examiner by E-Filed
Ryan Vancil
Deputy Hearing Examiner
700 Fifth Avenue, Suite 4000
Seattle, WA. 98104

To the City of Seattle by E-Mail
Patrick Downs
Assistant City Attorney
Patrick.Downs@seattle.gov

Alicia Reise
Alicia.Reise@seattle.gov

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 12th day of September, 2018.

Elizabeth A. Campbell,
Declarant