

VOLUME 9

JULY 26, 2018

**Hearing - Day 9**

**In the Matter of the Appeal of: Wallingford Community  
Council, et al.**

**July 26, 2018**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



Page 1

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

---

In the Matter of the Appeal of:        )  
WALLINGFORD COMMUNITY COUNCIL,        )  
ET AL.,                                        ) W-17-006  
  ) through  
of the adequacy of the FEIS issued by the ) W-17-014  
Director, office of Planning and        )  
Community Development.                )

---

Hearing, Day 9 - July 26, 2018  
Heard before Hearing Examiner Ryan Vancil

---

Transcribed by: Reed Jackson Watkins  
Court-Certified Transcription  
206.624.3005

Page 3

A P P E A R A N C E S

1  
2  
3 On Behalf of Appellant West Seattle Junction  
4 Neighborhood Organization:  
5 CHRISTINE TOBIN-PRESSER  
6 Bush Kornfeld LLP  
7 601 Union Street, Suite 5000  
8 Seattle, Washington 98101  
9  
10 On Behalf of Respondent City of Seattle:  
11 DALE JOHNSON  
12 JEFF WEBER  
13 DANIEL MITCHELL  
14 Seattle City Attorney's Office  
15 701 Fifth Avenue, Suite 2050  
16 Seattle, Washington 98104-7097  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 2

A P P E A R A N C E S

1  
2  
3 On Behalf of Appellant Fremont Neighborhood Council:  
4 TOBY THALER  
5 Attorney at Law  
6 Post Office Box 1188  
7 Seattle, Washington 98111-1188  
8  
9 On Behalf of Appellant Friends of Ravenna-Cowen:  
10 JUDITH BENDICH  
11 Attorney at Law  
12 1754 Northeast Sixty-Second Street  
13 Seattle, Washington 98115-6821  
14  
15 On Behalf of Appellant Seattle Coalition for  
16 Affordability, Livability & Equity:  
17 DAVID A. BRICKLIN  
18 Bricklin & Newman, LLP  
19 1424 Fourth Avenue, Suite 500  
20 Seattle, Washington 98101-2258  
21  
22  
23  
24  
25

Page 4

E X A M I N A T I O N I N D E X

1  
2  
3 WITNESS:                                       PAGE:  
4 JANINE REES  
5 Continued Direct Examination by Ms. Tobin-Presser     7  
6 Cross Examination by Mr. Mitchell                       11  
7  
8 JOHN STEWART  
9 Direct Examination by Ms. Bendich                       14  
10 Cross Examination by Mr. Johnson                       66  
11 Redirect Examination by Ms. Bendich                     73  
12  
13 TOBY THALER  
14 Continued Direct Examination by Mr. Bricklin           74  
15 Cross Examination by Mr. Mitchell                       87  
16  
17 MIKE LEECH  
18 Direct Examination by Mr. Mitchell                     89  
19 Cross Examination by Mr. Thaler                       125  
20 Cross Examination by Ms. Bendich                       159  
21 Cross Examination by Mr. Bricklin                       170  
22 Continued Cross Examination by Ms. Bendich           175  
23 Continued Cross Examination by Mr. Bricklin           177  
24 Redirect Examination by Mr. Mitchell                     182  
25

Page 5

EXAMINATION INDEX

WITNESS:	PAGE:
NOLAN RUNDQUIST	
Direct Examination by Mr. Mitchell	186
Cross Examination by Mr. Bricklin	212
Cross Examination by Ms. Bendich	216

Page 7

-o0o-  
July 26, 2018

HEARING EXAMINER: We return with direct for Ms. Rees.  
 MS. TOBIN-PRESSER: Should we start right in?  
 HEARING EXAMINER: I'm sorry?  
 MS. TOBIN-PRESSER: Should we start right in? She's already sworn and everything. Okay.  
 HEARING EXAMINER: Yes. You're still sworn in from yesterday.

CONTINUED DIRECT EXAMINATION

BY MS. TOBIN-PRESSER:

**Q. Ms. Rees, would you please turn to tab 137 in your notebook? And this will need to be an exhibit. I think we're at 206.**  
 HEARING EXAMINER: Did you say 137 or 1 –  
 MS. TOBIN-PRESSER: 137.  
 HEARING EXAMINER: Uh-huh. Marked as 206.  
 (Exhibit No. 206 marked for identification.)

**Q. (By Ms. Tobin-Presser) Do you recognize this document?**  
 A. Yes.  
**Q. And what is it?**  
 A. It is the Seattle Fire Department budget. You can see in the upper left-hand side it's from the City of Seattle website. I put the website number at the top of the page.

Page 6

EXHIBIT INDEX

NO.	DESCRIPTION	MARKED	RECEIVED
206	Seattle Fire Department Budget	7	8
190	Shrubs Flyover	13	
207	Historic District Registration Form	21	31
208	Washington Heritage Register of Historic Places certificate	32	50
209	Letter to Friends of Ravenna-Cowen	58	66
210	Photographs	50	66
211	The Roosie issue	58	59
212	Packet of documents showing the loss of two City-owned trees	77	78
213	Mike Leech's Resumé	90	94
214	LiDAR-based assessment for the City	98	100
215	Proposal for the LiDAR-based assessment	100	106
216	Seattle 2016 LiDAR Canopy Cover Assessment Webinar questions	106	108
217	NYC Urban Tree Canopy Assessment	134	140
218	Rundquist's Resumé	187	189
219	2013 Urban Forest Stewardship Plan	189	195
220	Street Tree Management Plan	195	201
221	Executive order on tree replacement	207	207
222	SDOT Street Tree Manual	208	209

Page 8

And it's a document prepared by Chief Harold D. Scoggins, fire chief with Seattle Fire Department.  
 MS. TOBIN-PRESSER: I would offer Exhibit 206 into evidence.  
 MR. MITCHELL: No objection.  
 HEARING EXAMINER: 206 is admitted.  
 (Exhibit No. 206 admitted into evidence.)

**Q. (By Ms. Tobin-Presser) And can you tell from this document the time period for this budget?**  
 A. At the bottom of the page it says 2017-18 proposed budget.

**Q. And did you obtain information from this document regarding the number of fires that occur per number of residents in the city?**  
 A. Yes, I did. In the second paragraph, Chief Scoggins points out that Seattle averages 0.7 fires annually per 1,000 residents.

**Q. Now, does the MHA EIS provide any information regarding the likely number of increased fires that would occur with an anticipated increased population?**  
 A. There is no specificity.

**Q. Did you do anything to assess specific impacts?**  
 A. Yes, I did.

**Q. So would you please turn to tab 154? This doesn't need to be an exhibit. It's pages 3.3 and 3.4 of the MHA EIS that's already Exhibit 2. Did you use any information from these**

REES, Janine

LEECH, Mike

Page 93

1 A. Sure. At ESA I've been involved in numerous -- preparation  
 2 of numerous EIS's, as well as both project level and  
 3 programmatic level EIS's. At the programmatic level I  
 4 supported the Yakima Integrated Plan Programmatic EIS, as  
 5 well as more recently the Seattle Public Schools  
 6 Programmatic EIS. Currently working on three other project  
 7 level EIS's. But a lot of my experience over the past 10  
 8 years has been supporting shoreline master program updates  
 9 for various cities and counties in western Washington as --  
 10 as the lead GIS analyst. And very similar to a programmatic  
 11 EIS, the SMP updates go through a process of doing an  
 12 inventory and characterization of existing conditions for  
 13 water bodies that meet the criteria under ecology's  
 14 definition of water bodies of the state. We do an  
 15 evaluation of those existing conditions to establish a  
 16 baseline, and then from there we work towards development of  
 17 environmental designations for each of these reaches within  
 18 the water bodies that are being examined. And then those  
 19 are used to develop policies and regulations, with the  
 20 ultimate goal of no net loss of ecological function within  
 21 those areas that extend 200 feet landward from water bodies  
 22 that are being evaluated.

23 MR. MITCHELL: So I'd move for admission of what's been  
 24 marked as Hearing Examiner Exhibit No. 213.  
 25 MS. BENDICH: (Inaudible.)

Page 94

1 HEARING EXAMINER: I just want to make sure we have a  
 2 connection between the document and the testimony. What is  
 3 this document?  
 4 THE WITNESS: I'm sorry, which document?  
 5 HEARING EXAMINER: The one you were looking at, the 213?  
 6 THE WITNESS: This document represents --  
 7 HEARING EXAMINER: What is it?  
 8 THE WITNESS: Like -- like a --  
 9 HEARING EXAMINER: Really simple, plain statement.  
 10 THE WITNESS: It's a resumé of sorts.  
 11 HEARING EXAMINER: Thank you. And is it reflective of  
 12 your experience that you've just described?  
 13 THE WITNESS: Yes.  
 14 HEARING EXAMINER: Exhibit 213 is admitted.  
 15 (Exhibit No. 213 admitted into evidence.)  
 16 **Q. (By Mr. Mitchell) And was Environmental Science Associates**  
 17 **contracted to prepare chapters of this EIS?**  
 18 A. Yes.  
 19 **Q. That we're here for?**  
 20 A. Yes. ESA supported the historic resources, the biologic  
 21 resources, the open space and recreation, the public  
 22 services and utilities, air quality and GH -- GH (inaudible)  
 23 as well.  
 24 **Q. And which of those chapters did you work on?**  
 25 A. Specifically, I worked on the biological resources chapter.

Page 95

1 **Q. And that chapter analyzed the potential impacts to tree**  
 2 **canopy and to environmentally-critical areas?**  
 3 A. Yes.  
 4 **Q. And which of those did you work on directly?**  
 5 A. I focused on the -- the tree canopy impacts, but also  
 6 supported peripherally the ECA's.  
 7 **Q. Okay. And so we're going to be talking a lot about tree**  
 8 **canopy, tree canopy cover. Can you describe what tree**  
 9 **canopy is?**  
 10 A. Sure. Tree canopy refers to the leaves, stems, and branches  
 11 of a tree as viewed from above.  
 12 **Q. And in your experience, is it common for a non-project**  
 13 **programmatic EIS such as this one to include a tree canopy**  
 14 **impact analysis?**  
 15 MS. BENDICH: Objection. He hasn't stated he worked on  
 16 that. Oh, I guess he did, the programmatic. Sorry.  
 17 Withdrawn.  
 18 A. No.  
 19 **Q. (By Mr. Mitchell) Why was it decided then that a tree canopy**  
 20 **impact analysis like the one that was prepared in chapter**  
 21 **3.6 be included in this EIS?**  
 22 A. As part of the scoping phase of the EIS, the project team  
 23 received comments from the public requesting that impacts to  
 24 tree canopy be evaluated as part of the EIS.  
 25 **Q. And absent that, would ESA have included the tree canopy**

Page 96

1 **analysis that was included in this environmental impact**  
 2 **statement?**  
 3 A. From my experience, typically for a programmatic level, EIS  
 4 non-project, it's not common to include a tree canopy  
 5 assessment.  
 6 **Q. Okay. Sir, can you provide us with a general overview of**  
 7 **the methodology just so that we can get a road map, and then**  
 8 **talk about each step in more detail?**  
 9 A. Yes.  
 10 **Q. As to the tree canopy impact analysis that you prepared.**  
 11 A. Yes. First we started with the -- the tree canopy layer  
 12 that was provided to us, a 2016 tree canopy layer, provided  
 13 to us by the city, using that to establish a baseline of  
 14 existing tree canopy. From there, we could use that to  
 15 calculate the current tree canopy average percents for each  
 16 of the zoning -- existing zoning designations. Then from  
 17 there, we could use that with the data set provided us --  
 18 provided to us in GIS, of the various alternatives. We  
 19 could calculate the difference between the existing zoning  
 20 designations and the -- the proposed zoning designations for  
 21 each alternative. We could then take that and then  
 22 summarize that information in a series of tables, or come up  
 23 with some conclusions. And then additionally some  
 24 mitigation measures were identified as part of that -- part  
 25 of that work.

1 three sentences that says that it might increase those  
2 impacts doesn't help us, because the zoning is happening  
3 regardless. Is the City Council going to go through this?  
4 The process that the City envisions is backwards. They are  
5 taking and putting into a council bill this city-wide  
6 process, and not doing the granularity to address the  
7 impacts up front.

8 **Q. And so let me tie those two things together. On the map  
9 showing the expansion -- showing the upzones in that East  
10 Fremont area, there were many blocks, several dozens of  
11 blocks being upzoned.**

12 **Did the sentences that you read in the EIS describing the  
13 potential impacts distinguish how those impacts are going to  
14 play out one block versus the other?**

15 A. Not at all.

16 **Q. If you were a City Council member and you were wondering,  
17 well, did we draw this line in the right place? Should we  
18 move it over two blocks? Should we move it up or down,  
19 north or south three blocks? Any information in the EIS  
20 that would allow a council member to figure that out?**

21 MR. JOHNSON: Objection. Speculation. He's not a council  
22 member. He's a fact --

23 **Q. Is there any information that would allow anyone to figure  
24 that out?**

25 A. None. Very little.

1 single-family zones, and due to the increase in the cost of  
2 living, the taxes going up, et cetera, people on fixed  
3 incomes especially want to be able to develop accessory  
4 dwelling units.

5 And so proposals are now at the City Council to increase  
6 the ability to do accessory dwelling units. But there's no  
7 discussion that I have seen anywhere, including in the DEIS  
8 for that proposal or in this EIS, that evaluates the  
9 cumulative effect of increasing the density city-wide. And  
10 people will say, well, the ADU/DADU proposal --

11 **Q. What's ADU/DADU?**

12 A. Accessory dwelling unit/detached accessory dwelling unit.  
13 So to allow three dwelling units on one single-family lot.  
14 And it's a significant potential increase in density  
15 city-wide outside of this area. The two things together  
16 constitute a huge upzone at a city-wide level without any  
17 consideration of either the granularity or the cumulative  
18 effect between the two actions.

19 **Q. And was SCALE concerned about the extent to which the  
20 proposals were developed with or without reference and  
21 deference to the neighborhood planning that preceded it?**

22 A. Well, having spent hundreds of hours myself developing  
23 neighborhood plans and listening to other people all around  
24 the city, including many in the SCALE committee, talk about  
25 the -- their neighborhood plans and how they're being

1 **Q. Are you familiar with the concept of a ten-minute walk shed?**

2 A. Certainly, especially after sitting in this hearing for the  
3 last five days.

4 **Q. All right. And you recall Mr. Steinbrueck talking about  
5 that?**

6 A. Yes.

7 **Q. And are you familiar with how the City used that ten-minute  
8 walk shed to draw the lines for the expansion areas?**

9 A. Yes.

10 **Q. All right. Was that a concern for SCALE, that that was a  
11 mechanism used for developing the urban village expansion  
12 areas?**

13 A. Yes.

14 **Q. And why was SCALE concerned about that?**

15 A. It doesn't take into account whether there really is  
16 transit -- whether -- a specific example, Fremont has hills.  
17 39th and Fremont were both cut deeply into a glacial  
18 moraine, so we have stairs and the zoning doesn't take into  
19 account where the buildings are -- how the buildings are  
20 located to fit with where the transit works or with where  
21 the bicycle paths work or don't work, et cetera.

22 **Q. Okay. What -- is SCALE concerned about the cumulative  
23 effects of this proposal together with other land use zoning  
24 proposals in the works in the city right now?**

25 A. Yes. Many of the people in SCALE, myself included, live in

1 basically denigrated by this process, yes, that's a  
2 significant concern.

3 Because that's the tool to apply the mitigation for the  
4 upzones at a granular level. And it's being -- the City  
5 administration is reducing -- I will not exaggerate, but  
6 significantly reducing the ability of neighborhood planning  
7 to have any effect on the land use decisions in this city.

8 **Q. So those -- so as a result of that concern, did SCALE review  
9 the EIS to see if it acknowledged the discrepancy between  
10 the proposal and the neighborhood plans and --**

11 A. No, it doesn't. And in fact, I believe it was briefed  
12 extensively -- maybe we've lost that motion, I can't  
13 remember -- that the comprehensive plan was changed, but  
14 they didn't change all of the elements of the comprehensive  
15 plan. They, meaning the administration proposing to the  
16 Council, and then the Council did not effectively remove the  
17 neighborhood planning element for all neighborhoods in order  
18 to facilitate this action.

19 So they're trying -- they -- the City is trying to do it  
20 retroactively, which I think is improper, but yes, it's a  
21 problem that we --

22 **Q. All right.**

23 A. -- see.

24 **Q. All right. So were you here during Mr. Steinbrueck's  
25 testimony?**



Page 101

1 just clarification and understanding of some of the kind of  
 2 range of products and -- and projects that they've worked  
 3 on, and made me very confident that the work that they do,  
 4 that they're leading experts in urban tree canopy  
 5 assessments. They've been doing urban tree canopy  
 6 assessments for over 100 communities in the United States  
 7 and internationally, as well as big cities, including New  
 8 York, Los Angeles, Boston, Chicago, and obviously Seattle as  
 9 well.

10 **Q. Great. Now, if you could turn to page 4 of the proposal.**  
 11 **There's a heading that's, "Task A, 2016 Tree Canopy**  
 12 **Mapping." What remotely-sensed data was the University of**  
 13 **Vermont proposing to use as the foundation for the 2016 tree**  
 14 **canopy assessment?**

15 A. They had proposed using a combination of leaf-on LiDAR and  
 16 high resolution aerial imagery. But in the absence of  
 17 leaf-on LiDAR, they -- they proposed that they could use  
 18 leaf-off LiDAR in combination with high resolution imagery.

19 **Q. And in that paragraph, about midway, there's a sentence that**  
 20 **starts with, "The source LiDAR data." Do you see that?**

21 A. Uh-huh.

22 **Q. Could you read that sentence and the next sentence after**  
 23 **that?**

24 A. Sure. It says, "The source LiDAR data will consist of  
 25 leaf-off LiDAR acquired in 2016. They'll be provided to us

Page 102

1 by the City of Seattle. As leaf-off LiDAR tends to  
 2 underestimate tree canopy, we will also make use of NAIP  
 3 data acquired by the USDA."

4 **Q. And then one more sentence. I'm sorry.**

5 A. "The imagery available through NAIP was acquired under  
 6 leaf-on conditions in 2015."

7 **Q. Okay. And do you agree with the proposal's description at**  
 8 **the top of page 4 in that first sentence, that the use of**  
 9 **leaf-off LiDAR, in combination with leaf-on NAIP aerial**  
 10 **imagery was the best available current remotely-sensed data**  
 11 **to use for the 2016 tree canopy assessment?**

12 A. Yes.

13 **Q. And if we turn to page 5 and 6 of the proposal, does page 5**  
 14 **and 6 describe the methodology of that 2016 tree canopy**  
 15 **assessment in more detail?**

16 A. Yes.

17 **Q. And the first sentence on page 5, does it indicate whether**  
 18 **the methodology used by Jarlath O'Neil-Dunne and his team,**  
 19 **whether that's been published in peer-reviewed journal**  
 20 **articles?**

21 A. Yes, it does. In fact, when I spoke to him as well, he  
 22 referred to the journal citation, the O'Neil-Dunne, et al.  
 23 2014, which is referenced at the end of this document, which  
 24 very -- very details the -- the methods that are approved by  
 25 the USDA Forest Service in terms of the methodology and

Page 103

1 approach that they've used, both for the City of Seattle, as  
 2 well as for other jurisdictions throughout the US.

3 **Q. So looking at -- at page 5 and 6, can you just give a brief**  
 4 **description of what their -- how they're proposing to use**  
 5 **the leaf-on and leaf-off data that you already described?**

6 A. Yeah. There's a newer remote sensing technique called  
 7 object-based image analysis, and through that process,  
 8 the -- of object-based image analysis, they take the high  
 9 resolution data, and they convert those to polygons as  
 10 opposed to evaluation of data as pixels. And then from  
 11 there, they can take those polygons, and then based on the  
 12 characteristics from the LiDAR data and the imagery of the  
 13 spectral and textural characteristics, they can classify  
 14 each of those polygons into a number of cover types. And  
 15 then from there, they can generate an output classification  
 16 map, which is then -- then further refined through the  
 17 methods that are detailed in its peer-reviewed journal  
 18 article. They use a pretty extensive manual review process  
 19 to take -- take this automated process and then bring it to  
 20 manual, to do a manual review at 1-to-2,500 scale to make  
 21 any corrections that are needed to improve the -- improve  
 22 the product and provide the best overall product possible.

23 **Q. Okay. And turning back to page 4 of the proposal, the**  
 24 **last -- well, down at the bottom, it says, "Our team has**  
 25 **carried out numerous projects." Do you see that sentence?**

Page 104

1 A. Yes.

2 **Q. Can you go ahead and read that sentence, and then I'll ask**  
 3 **you a question about it?**

4 A. Sure. It says, "Our team has carried out numerous projects  
 5 in which similar data leaf-off LiDAR, leaf-on imagery have  
 6 been used to map tree canopy at accuracies exceeding  
 7 99 percent."

8 **Q. Okay. So taking all things into consideration, the**  
 9 **expertise of the team at the University of Vermont Spatial**  
 10 **Analysis Laboratory, the LiDAR and remote sensing data that**  
 11 **they relied on, and the peer-reviewed methodology that they**  
 12 **used, and your direct communication with Jarlath**  
 13 **O'Neil-Dunne, is it your opinion that the data set that you**  
 14 **received from the city from the 2016 tree canopy assessment**  
 15 **was the most accurate and reliable data of the tree canopy**  
 16 **coverage in Seattle?**

17 A. Yes.

18 **Q. Okay. And that data set was used as the baseline for the**  
 19 **tree canopy impact analysis for this environmental impact**  
 20 **statement?**

21 A. Yes.

22 **Q. Tree canopy analysis?**

23 A. That's correct.

24 **Q. Okay. And so the assessment that -- what we just described,**  
 25 **that wasn't -- that wasn't done -- just to be clear, it**

1 A. Yeah.

2 **Q. If you go to the database and you type in "Wallingford,"**

3 **what pops up?**

4 A. You will get a list of buildings that the -- that are

5 identified as Wallingford structures, and we do have a copy

6 of that list.

7 **Q. Okay. But on the website itself --**

8 A. Right.

9 **Q. -- so it has the list by address; is that correct?**

10 A. That's correct.

11 **Q. But it has -- on the left-hand side, it says "view."**

12 A. So if I press -- if you press the "view" link, that will

13 take you to the inventory entry, and you'll see the entire

14 entry plus the photograph.

15 **Q. Okay. So is it -- is this really a complicated process to**

16 **do if you know what the URL is?**

17 A. It's not complicated at all. Matter of fact, you don't need

18 to know the URL. You can go to the -- just go to the

19 website, Department of Neighborhoods' website, and follow

20 the links to the preservation program, to the inventories,

21 and to the particular -- the search page. And you can

22 search by address, by architect, by style.

23 **Q. And by neighborhood?**

24 A. And by neighborhood, yes.

25 **Q. And so you had -- you did this walking throughout**

1 **Wallingford.**

2 A. Yes.

3 **Q. How many buildings did you actually look at?**

4 A. I didn't do an exact count, though that's possible, but my

5 estimate was a little over 4,000 buildings.

6 **Q. And of those buildings, how many did you actually believe**

7 **should be in this state of -- well, in part of your survey**

8 **of historic resources?**

9 A. I filled out 500 and -- with one -- within one or two of 520

10 inventory forms, and almost all those were entered into the

11 database.

12 **Q. And if you had to do it over again, would you have added**

13 **more?**

14 A. I probably would for two reasons. One is that I was told to

15 find about 500. And by the time I -- I was careful about

16 adding buildings to the inventory in the western edge of the

17 neighborhood, because I was beginning. I wasn't sure of

18 what I would find. Which is the whole purpose of the

19 windshield survey is to uncover things that maybe you

20 weren't aware of.

21 And then -- but as I moved towards the eastern boundary of

22 the neighborhood, I was already approaching the limit of how

23 many I could do. And in addition, this was done 14 years

24 ago, and I'm smarter, wiser, more adept at identifying

25 significant features of buildings, and there are probably a

1 few that if I were to review again today I'd be more anxious

2 to include them on the inventory.

3 MS. BENDICH: If you could pass this over, please, and

4 have it marked. This is SCALE Exhibit 172.

5 HEARING EXAMINER: Marked as 117.

6 (Exhibit No. 117 marked for identification.)

7 **Q. (By Ms. Bendich) And do you have a copy of that exhibit in**

8 **front of you, Mr. Veith?**

9 A. Yes, I do.

10 **Q. So this, when we talk about it, it's going to be Exhibit**

11 **172. So just if you would mark that --**

12 MR. JOHNSON: 117.

13 MS. BENDICH: Oh, I'm sorry. 117. Sorry. Yes.

14 **Q. (By Ms. Bendich) So if you could, when you refer to it,**

15 **refer to it by that number.**

16 **Okay?**

17 A. All right.

18 **Q. Okay. So what is this Exhibit 117?**

19 A. This is a list of buildings from the Wallingford

20 neighborhood, as identified on the inventory, and it

21 consists -- I think there's 14 pages. There's 624 addresses

22 listed on the document.

23 **Q. Okay. And if you take a look at the left side, it says**

24 **"view."**

25 A. Yes.

1 **Q. Is that what you were referring to that you can actually, if**

2 **you have the URL and you were there, you could actually**

3 **click on it and see the whole thing; right?**

4 A. Yes, you could.

5 **Q. Okay. And do you have any examples of what those look like?**

6 A. Yes. So --

7 **Q. Just hold them up. We're not putting them into evidence.**

8 A. Yeah. So these are examples of what you would find. This

9 particular one was done by another surveyor, but -- so there

10 is a significant statement, there is an appearance place on

11 the form, and then various headings for categorizing the

12 building we're going to --

13 MR. BRICKLIN: 16 --

14 MS. BENDICH: No, we don't have --

15 MR. BRICKLIN: Okay. No?

16 MS. BENDICH: No resume.

17 A. -- time period style, materials used. And these all design

18 to make the database searchable. And then there's a

19 photograph.

20 When the database was first set up, there wasn't a lot of

21 room, so small photographs were typical. As the database,

22 the computer capabilities, the city grew, the photographs

23 became more numerous and larger.

24 **Q. Okay. Thank you. Now, in addition, I'd like to -- if we**

25 **can pass this over.**

1 canopy cover under the different alternatives?  
 2 A. Yes.  
 3 Q. And in your professional experience, was the tree canopy  
 4 analysis adequate for a non-project environmental impact  
 5 statement?  
 6 A. Yes.  
 7 MR. MITCHELL: No further questions.  
 8 HEARING EXAMINER: Cross. Are appellants questioning in  
 9 any particular order, or how --  
 10 MS. BENDICH: Mr. Thaler's going to be doing -- starting  
 11 off.  
 12 MR. THALER: I'll take the lead.  
 13  
 14 CROSS EXAMINATION  
 15 BY MR. THALER:  
 16 Q. At the beginning of your testimony discussing the  
 17 methodology, you referred to a study that's cited in  
 18 Exhibit 215. Do you have Exhibit 215? It's City  
 19 Exhibit 63. Okay. You, I believe, referred to -- and  
 20 correct me if I'm wrong -- a study called O'Neil --  
 21 O'Neil-Dunne, McFadden and Royer, 2014; is that correct?  
 22 A. Yes. I have a copy of it as well.  
 23 Q. Oh, you do have a copy of it. Okay, good.  
 24 A. It's available online as well.  
 25 Q. Yes, I found it.

1 wrong, what you just read from O'Neil, or rather from  
 2 Exhibit 215, your assessment, methodology, is clear that  
 3 leaf-off tends to underestimate tree canopy. And you  
 4 corrected it with NAIP data; is that correct?  
 5 A. I didn't correct it, but --  
 6 Q. But the Vermont study, correct?  
 7 A. Yes.  
 8 Q. So you (inaudible) okay.  
 9 A. Yes.  
 10 Q. Is that methodology disclosed in the 2016 report, which is  
 11 Exhibit 69, City 53?  
 12 A. As I reviewed this report from the University of Vermont, it  
 13 appears to me that this report was intended for a layman  
 14 audience, intended for kind of the public to under- -- to  
 15 understand the results of the canopy assessment, so detailed  
 16 methods weren't explained specifically in this report. But  
 17 there are -- there's metadata associated with the digital  
 18 data that was delivered to the city that includes the inputs  
 19 and processes and outputs.  
 20 Q. Would you expect that city council members would look at  
 21 that when they're deciding where to zone, look at that  
 22 metadata?  
 23 MR. MITCHELL: Objection. Speculation.  
 24 HEARING EXAMINER: Sustained.  
 25 Q. (By Mr. Thaler) Looking at the O'Neil document, would I

1 A. Okay. Got it.  
 2 Q. Thank you. Could you direct us to where in Exhibit 215 the  
 3 leaf-on, leaf-off issue is discussed?  
 4 A. So, on page 4 of this exhibit, it says on the second --  
 5 under the "Task A 2016 Tree Canopy Mapping," second sentence  
 6 says, "Mapping tree canopy will be carried out using a  
 7 combination of LiDAR leaf-on high resolution aerial imagery.  
 8 We will leverage our years of experience building automated  
 9 systems that are capable of integrating vast amounts of  
 10 remotely sensed and other geospatial data sets. We'll  
 11 couple this with a detailed manual review. The source of  
 12 the LiDAR data set will consist of leaf-off LiDAR acquired  
 13 in 2016 that will be provided to us by the City of Seattle."  
 14 And then he says that, "As leaf-off LiDAR tends to  
 15 underestimate tree canopy, we'll also make use of NAIP data  
 16 to acquire -- acquired by the USDA."  
 17 Q. Okay. Is any of that information disclosed in the EIS  
 18 itself? Well, let me back up one step. Is any of that  
 19 information disclosed in the 2016 assessment, Exhibit 79?  
 20 And I don't know what the city number is.  
 21 A. I think it's 53.  
 22 Q. 53.  
 23 A. So your question, can you repeat that again?  
 24 Q. You're saying that that brief discussion of use of NAIP data  
 25 can correct for using the leaf-off -- correct me if I'm

1 assume that you have read it completely at some point?  
 2 A. I've reviewed it, yes.  
 3 Q. Yes. Can you find the tree -- leaf-on and leaf-off  
 4 discussion in that document?  
 5 A. As I indicated on page 4, it says that -- that because the  
 6 City of Seattle has leaf-off data as the best available data  
 7 source, that they would use that.  
 8 Q. Is there anything in O'Neil that discusses the relative  
 9 merits of using leaf-on and leaf-off?  
 10 A. From my readings of their work, they have proven in other  
 11 jurisdictions that they have been successful with accuracies  
 12 of 90 percent or above of doing urban tree canopy  
 13 assessments, using both data sources.  
 14 Q. Where is that numerical claim of accuracy in O'Neil?  
 15 A. Also, same on page 4. "Our team has carried out numerous  
 16 projects in which similar data, leaf-off LiDAR and leaf-on  
 17 imagery have been used to map tree canopy at accuracies  
 18 exceeding 99 percent."  
 19 Q. That's quoting from O'Neil?  
 20 A. This is the -- this is submitted by Jarlath O'Neil-Dunne,  
 21 this request for proposal.  
 22 Q. I understand that, that that's the request for proposal's  
 23 statement of methodology. But the question I have is, does  
 24 the actual published, peer-reviewed document, O'Neil-Dunne,  
 25 et al., 2014, have that information in it, or that claim?

Page 129

1 A. Yes.

2 **Q. I'm looking for it, and I have not found it. If you have a**

3 **printed-out copy of it, I would appreciate -- I'll give you**

4 **a couple minutes to scan it. I'd like to know where it is.**

5 MR. MITCHELL: Are you referring to an exhibit?

6 MR. THALER: No. I'm referring to a peer-reviewed study

7 that the witness is relying on to support the methodology

8 driving the study that is incorporated into the EIS to make

9 the determination that there's no significant impacts.

10 MR. MITCHELL: Well, the witness read from an exhibit.

11 MR. THALER: The witness read from an exhibit that is not

12 the peer-reviewed study that is being relied on and cited.

13 HEARING EXAMINER: So the witness has relied on his memory

14 of that peer-reviewed study. If cross has a copy of that

15 and wants to put it in front of him to --

16 MR. THALER: He has a copy of it. He told me.

17 HEARING EXAMINER: Of the study?

18 MR. THALER: Do you have a copy of it here?

19 THE WITNESS: It's in -- it's in my bag.

20 HEARING EXAMINER: Then that's fine, yeah. Normally it

21 would be your responsibility to provide it, but if he's got

22 it, then sure, you can look at it.

23 MR. JOHNSON: Do you want me to grab it?

24 THE WITNESS: I guess.

25 HEARING EXAMINER: If it's within a couple arms' length of

Page 130

1 reach, let's go ahead and do that.

2 (Inaudible colloquy)

3 THE WITNESS: Sorry. It's a pretty long --

4 HEARING EXAMINER: Take your time.

5 THE WITNESS: -- paper, as you probably have known.

6 MR. THALER: Yeah, it's 30 pages of text. Big type.

7 THE WITNESS: That's true.

8 A. Okay. So 3.2.4, accuracy assessment.

9 **Q. (By Mr. Thaler) Hold on. Let me get back to it here.**

10 A. This is kind of a summary beyond --

11 **Q. So what did you say? 3 point --**

12 A. 3.2.4, accuracy assessment.

13 **Q. Yes.**

14 A. This is a paper that describes the University of Vermont

15 Spatial Analysis Lab's kind of methods using object-based

16 image analysis using various input data sources,

17 combinations of leaf-on, leaf-off LiDAR with high resolution

18 imagery. And they state in this paragraph that, "Accuracy

19 assessments for selected SAL tree canopy mapping projects

20 are shown in table 2. In all cases, accuracy has exceeded

21 90 percent for tree canopy and were usually higher."

22 **Q. Could you read --**

23 A. "Because of that accuracy combined with the" --

24 **Q. Okay. Good.**

25 A. Sorry.

Page 131

1 **Q. I was going to say, please read the next sentence, too.**

2 A. "Because of the high accuracies combined with the need to

3 limit cost for many projects, accuracy assessments are not

4 performed for every SAL tree canopy mapping project. The

5 time and money that could be devoted to statistical analysis

6 are instead devoted to manual corrections to improve the

7 overall representation of tree canopy and avoid obvious

8 errors as described above."

9 **Q. So the question of an accuracy assessment, is there an**

10 **accuracy assessment proposed in the methodology that you**

11 **submitted to the city?**

12 A. No, I don't -- well, not me per- -- I didn't do the

13 analysis.

14 **Q. Okay. I need to keep it -- I need to remember that you're**

15 **not the Vermont person.**

16 A. Yes.

17 **Q. So let's lay a little foundation. What is your**

18 **relationship? Are you the project manager and subcontracted**

19 **to the Vermont folks to do the actual GIS work?**

20 A. We worked with the City of Seattle to perform the tree

21 canopy analysis for the -- for this EIS.

22 **Q. And then --**

23 A. We were provided -- the city provided us with the data

24 product to use as one of the inputs to do the analysis.

25 **Q. And when you say "we", you mean ESA?**

Page 132

1 A. Correct.

2 **Q. And then ESA worked with the Vermont group. So we're -- how**

3 **does -- you're avoiding --**

4 **(Inaudible colloquy)**

5 **Q. (By Mr. Thaler) So you're saying that the city stands**

6 **between you and the Vermont group?**

7 A. Correct.

8 **Q. Was there an accuracy assessment in any of that material?**

9 A. The accuracy assessment was not requested by the city as

10 part of this assessment.

11 **Q. Did that concern you at all, or did you rely on the**

12 **statement in O'Neil?**

13 A. So, after any conversations with -- with Jarlath and

14 understanding the project, it was clear to me that from his

15 experience doing urban tree canopy assessments for projects

16 that have smaller budgets, that it makes more sense to do

17 manual -- to make the investments to do manual corrections

18 to improve the overall product and make the investment to do

19 a significant amount of groundwork, which is pretty costly

20 to do to then generate the statistical analyses, which give

21 you percentages of overall accuracy of the product.

22 **Q. Okay. Let's go to the -- well, one more point on this**

23 **O'Neil. There's a section -- let me confirm that. Since**

24 **you have O'Neil in front of you, could you turn to page**

25 **2 point -- to section 2.1.2?**

Page 145

1 A. Sure. "Assuming that all tree protection regulations are  
 2 implemented with future development under new zoning, the  
 3 change in tree canopy cover under the preferred alternative  
 4 is not considered a significant impact."  
 5 **Q. So could you take a look at the -- look at the -- read the**  
 6 **page number and then read the section that's the first**  
 7 **underlined section?**  
 8 HEARING EXAMINER: Where are we at with this doc -- what  
 9 document is this?  
 10 MR. THALER: It's Exhibit 73.  
 11 A. Tree Regulations Research Project?  
 12 **Q. (By Mr. Thaler) Yes. We're on page --**  
 13 **A. Page 4 of 15?**  
 14 **Q. Yes.**  
 15 **A. The findings from complaints?**  
 16 **Q. Yes.**  
 17 **A. "The research found instances where trees were removed prior**  
 18 **to development without approval."**  
 19 **Q. Okay. Go ahead and read it.**  
 20 **A. "Tree cutting complaints resolved as non violation showed an**  
 21 **upward trend going from 27 in 2008 to 75 in 2015."**  
 22 **Continue?**  
 23 **Q. That'll do. I'm going to hand you Exhibit 74 and ask you to**  
 24 **turn to page 7. It's the slideshow that is a presentation**  
 25 **after the study. So page 4 -- 7 of that is findings. Can**

Page 146

1 **you read the first line?**  
 2 HEARING EXAMINER: Mr. Thaler, I'm a little -- I may just  
 3 now be recalling the testimony, but as I recall it, witness  
 4 did read the final sentence that you indicated.  
 5 MR. THALER: Yes.  
 6 HEARING EXAMINER: There was an objection to going down,  
 7 that we're out of 73, and now we're -- we've been through  
 8 that already, but now we're going into 74. The testimony  
 9 when he was reading that sentence was whether there would be  
 10 a significant impact, and as I recall it, was based on his  
 11 percentages data and the research that he had done, and  
 12 that's how he had agreed with that phrase. I don't recall  
 13 any testimony about testifying about the regulations, which  
 14 seems to be the route you're going.  
 15 MR. THALER: Okay. Okay. Counsel had him read that  
 16 section.  
 17 HEARING EXAMINER: It seems to go against the objection  
 18 that I upheld.  
 19 MR. THALER: Okay.  
 20 HEARING EXAMINER: So I'm not sure how you're getting to  
 21 the regulations through this witness.  
 22 MR. THALER: Primarily because counsel asked him to read  
 23 that last paragraph.  
 24 HEARING EXAMINER: And that's why I'm --  
 25 MR. THALER: Yeah.

Page 147

1 HEARING EXAMINER: I think you're going against the  
 2 objection that I sustained.  
 3 MR. THALER: Okay. All right.  
 4 HEARING EXAMINER: That's a line of questioning that  
 5 doesn't go to what was raised in direct.  
 6 MR. THALER: Okay.  
 7 HEARING EXAMINER: As far as I recall. If somebody can  
 8 point me out to the testimony differently, but I don't  
 9 recall him -- this witness testifying about the efficacy of  
 10 the city regulations.  
 11 MR. THALER: Well, I'll withdraw that line on those  
 12 exhibits, but I would -- I'll come back to it after I've  
 13 gone through some more material.  
 14 **Q. (By Mr. Thaler) Okay. Please turn to the table on page**  
 15 **3.339. Mr. Mitchell walked you through that at some length.**  
 16 **Okay. The first question or two concern the use of two**  
 17 **decimal points to display the change coefficient. Do you**  
 18 **have background in statistics?**  
 19 **A. I've taken a statistics class in college. But I would not**  
 20 **say I'm a statistician.**  
 21 **Q. There's probably no one in the room. Does using two decimal**  
 22 **places have an indication of the accuracy of the data that**  
 23 **is warranted?**  
 24 **A. Yes.**  
 25 **Q. How is it warranted to use two decimal places in this study?**

Page 148

1 **A. Well, the underlying data is high resolution. The data**  
 2 **product -- I think a case could be made for using one or two**  
 3 **decimal places, so I -- the project team made a decision to**  
 4 **include the high scenario, low scenarios out to two decimal**  
 5 **places. In other columns they use one decimal place --**  
 6 **Q. You've mentioned --**  
 7 **A. -- for acres.**  
 8 **Q. I'm sorry.**  
 9 **A. I'm sorry. Per acres it was one -- out to one decimal, and**  
 10 **for percent it was two decimal places.**  
 11 **Q. Was there a statistician on that team?**  
 12 **A. No, not that I'm aware of.**  
 13 **Q. Who was on that team?**  
 14 **A. The -- the team that helped to do the analysis?**  
 15 **Q. Well, you mentioned project team a couple of times. One was**  
 16 **specifically with reference to your answer regarding the**  
 17 **conclusions on page 3.338 that there would be -- under the**  
 18 **preferred alternative, the change in tree canopy is not**  
 19 **considered a significant impact. You said the project team**  
 20 **considered it not significant. Now you're using this -- is**  
 21 **that the same team?**  
 22 **A. Yes.**  
 23 **Q. So that's what I want to know. Who is on that team?**  
 24 **A. The team was primarily the people sitting in this room,**  
 25 **Geoffrey Wentlandt at the city, as well as Sharese Graham**

Page 157

1 A. We evaluated the areas within each of the proposed zoning  
 2 alternatives. So that was within -- within the project  
 3 extent.  
 4 **Q. But no division by land to be in urban villages; i.e., urban**  
 5 **villages as expanded, and all the L and C and NC zones**  
 6 **outside the urban villages?**  
 7 A. To my knowledge, we didn't do an evaluation outside of those  
 8 areas, only within the -- the project extent.  
 9 **Q. Okay. The project extent includes all of it. It's the**  
 10 **division that I'm curious about. How do you define the**  
 11 **project area? Do you need to look at a map?**  
 12 A. If I can go back to the --  
 13 **Q. The project area will be in section 1 of the EIS or 2.1,**  
 14 **1.2.**  
 15 (Inaudible colloquy)  
 16 **Q. (By Mr. Thaler) Try 2.3, study area. Exhibit 2-1 on page**  
 17 **2.3. So you understand that the dark outlined areas are**  
 18 **urban villages, but that there is significant study area**  
 19 **outside the urban villages?**  
 20 A. Yes.  
 21 **Q. So the question is, was there any analysis based on that**  
 22 **distinction, in and out?**  
 23 A. The analysis that was performed for the tree canopy  
 24 assessment was presented in --  
 25 **Q. Well, no, for the EIS. Well, no, that's a question. If**

Page 158

1 you're doing an analysis of impacts in the study area, and  
 2 considering it on this large spatial extent, but you're  
 3 relying on a report from somebody else; i.e., the Vermont  
 4 group, if that report is limited in terms of the assumptions  
 5 and how the data is displayed, then your analysis is going  
 6 to be likewise limited, isn't it?  
 7 A. No. The data set that was provided to us by Vermont was one  
 8 input data layer. Then we were provided -- the city  
 9 provided us the data sets, GIS data layers for the various  
 10 alternatives. And through the process of an overlay  
 11 operation, we -- we can assess the tree canopy cover for the  
 12 various alternatives.  
 13 **Q. Okay. So the project team could have pulled out an**  
 14 **inside/outside urban village?**  
 15 A. Yes. Yeah. It's possible that we, you know, we could've --  
 16 could've done more.  
 17 **Q. And you could've done the urban village itself, each one?**  
 18 A. Yes, those calculations could be made.  
 19 **Q. Okay. I think I'm almost done. The 2016 Seattle canopy**  
 20 **assessment -- and my apology if I've asked this -- it was**  
 21 **not peer reviewed, was it?**  
 22 A. To my knowledge, no.  
 23 **Q. Have you ever worked on a peer-reviewed document? Have you**  
 24 **published?**  
 25 A. I have not published a peer-reviewed document.

Page 159

1 **Q. Is there any place in the EIS or the documents directly**  
 2 **referenced by it, the 2016 document being the primary one,**  
 3 **that explain how the leaf-off LiDAR data was accounted for**  
 4 **in the impact assessment?**  
 5 A. To my knowledge, those methods were not detailed in the  
 6 impact assessment.  
 7 **Q. Or in the 2016 document, other than the reference?**  
 8 A. Yeah, by reference, the methods are described, but not --  
 9 **Q. Okay.**  
 10 MR. BRICKLIN: You done?  
 11 MR. THALER: Unless you want to feed me something, or  
 12 you've got something.  
 13 MR. BRICKLIN: We can ask our own.  
 14 MS. BENDICH: I have a few.  
 15 HEARING EXAMINER: They can ask their own questions.  
 16 MS. BENDICH: I have a --  
 17 MR. BRICKLIN: We can ask our own.  
 18 HEARING EXAMINER: Yeah. Separate parties.  
 19 MS. BENDICH: Yes, Your Honor.  
 20 MR. THALER: Go for it. I'm done. Thank you very much.  
 21 THE WITNESS: Thank you.  
 22 C R O S S E X A M I N A T I O N  
 23 BY MS. BENDICH:  
 24 **Q. So, Mr. Leech, I just have a few follow-up questions based**  
 25 **on what Mr. Thaler was asking you, if you'll bear with me.**

Page 160

1 A. Sure.  
 2 **Q. You mentioned something about a significant amount of ground**  
 3 **work. I just want to know what that means.**  
 4 A. Oh. In terms of an accuracy assessment for remote sensing  
 5 methods, there's various ways to assess the accuracy of data  
 6 products. In some cases, there is ground data collection  
 7 that is ground truthing, to go out in the field and collect  
 8 point data, or within fixed radius polygons, various  
 9 techniques for collecting data on the ground to confirm or  
 10 validate that the areas to be mapped are -- are what -- what  
 11 they say they are from the classification.  
 12 **Q. But that wasn't done in this case; is that correct?**  
 13 A. That's correct.  
 14 **Q. And why is that signif -- I mean, what I want to know is,**  
 15 **why do people even do -- you said to make sure it was**  
 16 **verifiable, I suppose.**  
 17 A. Yeah, there's various methods for conducting, kind of  
 18 assessing the overall accuracy of data products. So with  
 19 traditional remote sensing methods, that was the traditional  
 20 approach was to either put people on the ground to collect  
 21 the data within the study area, or use high resolution  
 22 imagery, different imagery from what's being used in the --  
 23 in the classification to confirm that, yes, this is a tree  
 24 in that location. So there's different methods to doing  
 25 accuracy assessments. And based on the resources available

Page 161

1 and the -- the type of project and the product required can  
 2 necessitate different -- different pathways to go.  
 3 **Q. So you just said to verify that this is a tree.**  
 4 A. Yes.  
 5 **Q. What does that mean?**  
 6 A. Oh, so I was referring to the -- the 2016 canopy cover  
 7 assessment data layer, that is used as one of the inputs for  
 8 this -- the assessment in our -- in the EIS. So the data  
 9 product is a polygon data set that maps out polygons of tree  
 10 canopy within the -- within the city jurisdiction.  
 11 **Q. Okay. I got that point. But I don't understand to make**  
 12 **sure that a tree is a tree. Does that do that, or it**  
 13 **doesn't do that?**  
 14 A. So the -- the process to do the classification involves a --  
 15 through -- for the -- specific to this data product, there  
 16 was a pretty significant amount of manual refinements that  
 17 were made using high resolution aerial imagery to refine the  
 18 polygons that represent trees. So you can see that from --  
 19 from, like, a high resolution aerial photo. Like, if you  
 20 zoomed in to Google maps, for example, you can probably use  
 21 your hand to digitize a polygon representing a tree from --  
 22 from satellite imagery.  
 23 **Q. But do you know whether, in fact, that was actually done**  
 24 **overall for all of this area by --**  
 25 A. Yes. It was done at a 1 to 2,500 scale.

Page 162

1 **Q. 1 to 2,500.**  
 2 A. It's essentially, like, two -- two block -- two or three  
 3 blocks, that kind of extent. Like, if you were zooming in,  
 4 it would be kind of at that scale.  
 5 **Q. Okay. So one of our witnesses testified, or actually showed**  
 6 **pictures of a 40-foot rhododendron.**  
 7 A. Uh-huh.  
 8 **Q. Are you saying that that would be identified as a**  
 9 **rhododendron as opposed to a tree?**  
 10 A. So that's where the LiDAR data comes in. So the LiDAR is --  
 11 provides elevation information. So they can  
 12 differentiate -- they can determine a threshold for what is  
 13 a shrub versus a tree. So based on the height of the  
 14 vegetation, they can remove shrubs or other vegetation that  
 15 are below a certain height threshold.  
 16 **Q. So it's the height threshold you're looking at?**  
 17 A. I believe it was cited in the -- in this document is, like,  
 18 12 feet.  
 19 **Q. Okay. So a 40-foot rhododendron would then turn up as a**  
 20 **tree; is that correct?**  
 21 A. A 40-foot tall rhododendron, or wide?  
 22 **Q. Yes. Yes. No. A 40-foot tall rhododendron.**  
 23 A. A 40-foot tall rhododendron might -- might show up as a  
 24 tree, yes.  
 25 **Q. And anything, then, over 12 feet would show up as a tree; is**

Page 163

1 that right?  
 2 A. Whatever the threshold determination would be, yes.  
 3 **Q. Okay. So, I mean, we did have testimony yesterday with**  
 4 **actual pictures of shrubs that were well -- were 25 feet,**  
 5 **and so forth. So the data that you're using then would not**  
 6 **differentiate -- as long as it was over 12 feet, it would**  
 7 **not differentiate between a tree and a shrub?**  
 8 A. It -- based on elevation, that's correct.  
 9 **Q. And then when you're talking about groundwork, wouldn't it**  
 10 **be -- couldn't you do some sampling? I understand it's**  
 11 **really labor intensive, but couldn't you pick some samples**  
 12 **of just a couple of neighborhoods and say, okay, let's**  
 13 **really truth it out; is this really what it's supposed to**  
 14 **be?**  
 15 A. Yeah, I mean, you have to make some tough decisions on these  
 16 tree canopy assessments of where you put your resources.  
 17 And based on their extensive experience from doing tree  
 18 canopy assessments in other cities, they have -- they have  
 19 found it more cost effective to devote those resources  
 20 towards -- towards making the manual refinements versus  
 21 putting people on the ground.  
 22 **Q. So this is truly an economic decision then based on the**  
 23 **amount of money they're getting for what they're doing?**  
 24 A. Yes.  
 25 **Q. But if it were preferred, wouldn't you want to have some**

Page 164

1 **ground assessment work?**  
 2 A. Yeah. Ideally, if there was unlimited resources, we could  
 3 send people on the ground to do it.  
 4 **Q. I'm not asking about unlimited resources. I'm just saying a**  
 5 **sample. Wouldn't you want to do that?**  
 6 A. Sure. It would be -- it would be nice to have.  
 7 **Q. And I was just looking at your resumé. I was really struck**  
 8 **with something actually in your resumé. You had a mobile**  
 9 **application development, Washington Invasive Species**  
 10 **Council. You developed a mobile IOS?**  
 11 A. I was the project manager for that effort. We developed an  
 12 IOS and android application.  
 13 **Q. And that allowed -- and what did that do?**  
 14 A. So that is a crowd-sourcing mobile application for the  
 15 Washington Invasive Species Council that has -- basically  
 16 has a baseline of invasive species throughout the State of  
 17 Washington. And it can allow the public to use that app  
 18 to -- if they're out in the field and they see an invasive  
 19 species, they can take a photo of it, and then they -- it  
 20 collects the GPS position of that, and then it gets  
 21 submitted to the state, the RCO's database, which then gets  
 22 verified through their -- their process, and then can be  
 23 inventoried for early detection, rapid response of invasive  
 24 species.  
 25 **Q. Okay. So that application, which here is being limited to**

Page 165

1 **invasive species, can that application equally apply to**  
 2 **what's actually on the ground? Trees, shrubs, whatever, you**  
 3 **could feed that into a database to see what was actually**  
 4 **there?**  
 5 A. Sure. I mean, yeah, people can use -- there's lots of  
 6 different mobile data collection tools for collecting --  
 7 collecting data in the field for being able to understand  
 8 that and then use that for other -- other projects.  
 9 **Q. That didn't happen here, though; is that correct?**  
 10 A. That's correct.  
 11 **Q. Okay. So I'd like to draw your attention to page -- of the**  
 12 **chapter 3.6 to page 3 -- oh, I need my second-look**  
 13 **magnifiers here.**  
 14 MR. BRICKLIN: This page?  
 15 MS. BENDICH: Yeah.  
 16 MR. BRICKLIN: 318. 3.318.  
 17 MS. BENDICH: 3.318. I actually brought a second --  
 18 **Q. (By Ms. Bendich) So looking at that bottom paragraph on page**  
 19 **3.318, you see that where it starts, "The acreage"?**  
 20 A. Yes.  
 21 **Q. Okay. So, "The acreage and percent of tree canopy was**  
 22 **quantified by existing and proposed zoning designations**  
 23 **within each of the MHA alternatives in GIS. For the**  
 24 **analysis, green space data were evaluated separately." Do**  
 25 **you see that?**

Page 166

1 A. Yes.  
 2 **Q. "As tree canopy in these areas are unlikely to change." You**  
 3 **see that?**  
 4 A. Yes.  
 5 **Q. Okay. So Mr. Thaler asked you about street trees. Are**  
 6 **those -- let's assume that these regulations and ordinances**  
 7 **are maintained, and they actually do what they say. Aren't**  
 8 **those trees supposed to stay -- they're not supposed to**  
 9 **change either, are they?**  
 10 A. Yeah, that -- that would be -- that would be included as  
 11 part of the -- within each of those zoning designations  
 12 evaluated.  
 13 **Q. And doesn't the Department of Transportation have data on**  
 14 **all those trees?**  
 15 A. They might.  
 16 **Q. So shouldn't they be treated separately? Assuming that that**  
 17 **data exists, shouldn't they be treated separately, just like**  
 18 **the green space is being treated separately?**  
 19 A. I don't -- I'm not sure.  
 20 **Q. Well, I'm just curious as to why the green -- if the open**  
 21 **space data were evaluated separately and were taken out of**  
 22 **this data, why was that done?**  
 23 A. I think that we -- we assumed that there would be no -- no  
 24 development or no impacts to tree canopy in green space  
 25 areas. As a re --

Page 167

1 **Q. Okay.**  
 2 A. For this analysis.  
 3 **Q. And so you would also assume there would be no impacts to**  
 4 **street tree canopy; is that right?**  
 5 MR. MITCHELL: Objection. Leading.  
 6 MS. BENDICH: I mean, I -- I get to do that.  
 7 (Simultaneous crosstalk)  
 8 HEARING EXAMINER: Overruled. Overruled.  
 9 MR. MITCHELL: But I should say, that she's just  
 10 testified. That's not what the witness has testified to.  
 11 MS. BENDICH: I'm asking his opinion.  
 12 HEARING EXAMINER: Overruled.  
 13 A. I'm sorry. Can you repeat the question?  
 14 **Q. (By Ms. Bendich) Well, if you deleted out all the green**  
 15 **space here, shouldn't you have equally taken out the green**  
 16 **space that's attributable to the right-of-way trees?**  
 17 A. It's -- it's something that could've been done, but we --  
 18 our team made a decision to include those areas as part of  
 19 the zoning designation.  
 20 **Q. But since those don't change, you're looking at data that**  
 21 **don't change with data that does change. How can you**  
 22 **evaluate it without taking out that data?**  
 23 A. It was -- it was our team's decision to include the -- those  
 24 areas within the zoning designations.  
 25 **Q. But then aren't you getting a statistically skewed set of**

Page 168

1 **data when you do that?**  
 2 MR. MITCHELL: Objection. Asked and answered.  
 3 HEARING EXAMINER: Sustained.  
 4 **Q. (By Ms. Bendich) Who is the decision maker to say that you**  
 5 **shouldn't take out the right-of-way trees? I just want to**  
 6 **know who to ask about this.**  
 7 A. About right-of-way?  
 8 **Q. Yeah.**  
 9 A. I believe you could refer that to Geoff or Sharese.  
 10 **Q. I'll wait for them then, I guess. So you did mention that**  
 11 **you could have shown -- you had the data available to show**  
 12 **urban village by urban village what the impact, even with**  
 13 **the right-of-way data or whatever, you could show that**  
 14 **easily with this -- these data; is that correct?**  
 15 A. I don't think I said easily, but I think I did say that it  
 16 could be done.  
 17 **Q. Okay. Was there any attempt made to do that so that you**  
 18 **could actually see it?**  
 19 A. The project team made the determination to do the -- to not  
 20 include that as part of -- part of this assessment.  
 21 **Q. Was there any internal review -- and I mean that by other**  
 22 **City of Seattle employees -- before this was released?**  
 23 A. Yes, I believe so.  
 24 **Q. So did we have folks from -- and I always get the initials**  
 25 **wrong. The Racial Justice and [sic] --**



**VOLUME 10**

**JULY 27, 2018**

**Hearing - Day 10**

**In the Matter of the Appeal of: Wallingford Community  
Council, et al.**

**July 27, 2018**



**206.287.9066 | 800.846.6989**

**1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101**

**[www.buellrealtime.com](http://www.buellrealtime.com)**

**email: [info@buellrealtime.com](mailto:info@buellrealtime.com)**



BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of: )  
WALLINGFORD COMMUNITY COUNCIL, )  
ET AL., ) W-17-006  
) through  
of the adequacy of the FEIS issued by the ) W-17-014  
Director, Office of Planning and )  
Community Development. )

Hearing, Day 10 - July 27, 2018

Heard before Hearing Examiner Ryan Vancil

Transcribed by: Debra Kallgren, CETD  
Court-Certified Transcription

APPEARANCES

On Behalf of Respondent City of Seattle:  
JEFF WEBER  
DANIEL MITCHELL  
DALE JOHNSON  
Seattle City Attorney's Office  
701 Fifth Avenue  
Suite 2050  
Seattle, Washington 98104-7097

APPEARANCES

On Behalf of Appellant Fremont Neighborhood Council:  
TOBY THALER  
Attorney at Law  
Post Office Box 1188  
Seattle, Washington 98111-1188

On Behalf of Appellant Friends of Ravenna-Cowen:  
JUDITH BENDICH  
Attorney at Law  
1754 Northeast Sixty-Second Street  
Seattle, Washington 98115-6821

On Behalf of Appellant Seattle Coalition for  
Affordability, Livability & Equity:  
DAVID A. BRICKLIN  
Bricklin & Newman, LLP  
1424 Fourth Avenue  
Suite 500  
Seattle, Washington 98101-2258

EXAMINATION INDEX  
PAGE

1	WITNESS:	
2		
3	NOLAN RUNDQUIST	
4	Cross-Examination (Contd) by Ms. Bendich.....	6
5	Cross-Examination by Mr. Thaler.....	8
6	Redirect Examination by Mr. Mitchell.....	14
7		
8	ILON LOGAN	
9	Direct Examination by Mr. Mitchell.....	23
10	Cross-Examination by Ms. Bendich.....	59
11	Cross-Examination by Mr. Bricklin.....	62
12	Redirect Examination by Mr. Mitchell.....	71
13		
14	CHRIS MEFFORD	
15	Direct Examination by Mr. Weber.....	79
16	Voir Dire Examination by Mr. Bricklin.....	120
17	Direct Examination (Resumed) By Mr. Mitchell.....	121
18	Cross-Examination by Mr. Bricklin.....	124
19	Cross-Examination by Mr. Thaler.....	156
20	Redirect Examination by Mr. Weber.....	157
21	Examination by the Hearing Examiner.....	165
22		
23	KATHERINE WILSON	
24	Direct Examination by Mr. Johnson.....	172
25	Cross-Examination by Mr. Bricklin.....	224
	Cross-Examination by Ms. Bendich.....	248

Page 5

EXHIBIT INDEX

NO.	DESCRIPTION	MARKED	ADMITTED
223	Photo of Tree Public Notice	11	13
224	Ilon Logan's Resume	23	57
225	Director's Rule 10-2006	55	56
226	Director's Rule 30-2015	57	78
227	City of Seattle Analysis and Decision of the Director, SDCI	69	78
228	Chris Mefford's Resume	79	81
229	Technical Memorandum	83	116
230	Spreadsheet	117	120
231	Katherine Wilson's CV	174	175
232	Export from the City's Historical Sites Database of Inventoried Properties	197	199
233	Export from the City's Historical Sites Database for Westwood-Highland Park	197	199
234	ESA Map	200	202
235	Example Record within the City's Historic Sites Database	203	204
236	Form	203	204
237	Reprint of an ESA Interoffice Email	227	233
238	Draft	229	233

Page 6

-o0o-  
July 27, 2018

UNIDENTIFIED MALE: Mr. Rundquist.  
HEARING EXAMINER: We continue with Mr. Rundquist on cross, July 27, 2018.

NOLAN RUNDQUIST Witness herein, having been previously duly affirmed on oath, was examined and testified as follows:

CROSS-EXAMINATION (Contd.)  
BY MS. BENDICH:  
Q. Good morning, Mr. Rundquist.  
A. Good morning.  
Q. Does SDOT maintain data on the total number of street trees?  
A. Pardon?  
Q. Does SDOT maintain data on the total number of street trees?  
A. We -- well, we're attempting to do so. We -- we have an in- -- acknowledged that we have an incomplete inventory right now.  
But -- but all street trees are intended to be inventoried, except those are that in hard-to-get-to, unimproved street rights-of-way, things like that.

Page 7

Q. Okay. But currently do you have -- whatever your inventory is, do you have one that has numbers of trees in it?  
A. Yes, we do.  
Q. Okay. And I think you've already mentioned how you're trying to update that information. Does that inventory include street trees planted by homeowners?  
A. Yes, it does.  
Q. Does it include trees that SDOT provided to property owners?  
A. SDOT typically, if we plant the tree, we maintain it. We do have several other departments that supply trees to homeowners. And yes, if they are street trees, they are included in that inventory.  
Q. Okay. And in your experience as an arborist, is there a way to calculate how many acres of street trees there are?  
A. We would probably look to the -- to do a GIS analysis, we would probably look to the canopy layer.  
Q. Okay. Let me -- let me --  
A. But -- but no. You know, we --  
Q. Okay. I'm just looking at -- you know the number of trees.  
A. Correct.  
Q. You know kind of the spacing of the trees. Isn't there a way simply to change that into a calculation of how many acres that is?  
A. It's -- that's typically not how we look to figure out, you know, how many -- how many street trees we have. Since it's

Page 8

a linear area, you know, basically a right-of-way, 60 feet wide and however many feet long, we could figure out how many acres of street trees, I suppose. But again --  
Q. Isn't that a standard way in forestry to do --  
A. In forestry, perhaps. In urban forestry, absolutely not.  
Q. Okay. All right. Did anyone involved in the MHA draft EIS contact you or your staff to obtain information about street trees?  
A. I -- I did not have any contact with them.  
Q. And to your knowledge -- well, have you participated at all in the EIS process?  
A. No.  
MS. BENDICH: Thank you. I am finished.  
HEARING EXAMINER: Mr. Thaler.  
MR. THALER: Okay.

CROSS-EXAMINATION  
BY MR. THALER:  
Q. I am going to hand you Exhibit 212 from yesterday. And before I do that, I want to ask, do you remember testifying that the City agrees that there are difficulties protecting trees on private property, but does a pretty good job on right-of-way trees?  
A. Yes.  
Q. Okay. This is Exhibit 212, and I've numbered the pages.

LOGAN, Ilon

1 **Q. So if you could turn to -- oh, you're there, okay. Are**  
 2 **Seattle's environmentally critical areas -- are they listed**  
 3 **in 25.09.012?**  
 4 A. Yes.  
 5 **Q. Okay. And they track with what the state has defined to be**  
 6 **critical areas?**  
 7 A. Yes.  
 8 **Q. Okay. Is there -- if you could turn to 25.09.520.**  
 9 A. Okay.  
 10 **Q. Which is towards the end of the chapter. It's the**  
 11 **definitions section. Do you see that there's a definition**  
 12 **for buffer?**  
 13 A. Yes.  
 14 **Q. Can you read that definition?**  
 15 A. Buffer means a defined area adjacent to and/or a part of an  
 16 environmentally critical area and intended to protect the  
 17 environmentally critical area.  
 18 **Q. Okay. And does Chapter 25.09 establish regulatory buffers**  
 19 **within that code?**  
 20 A. Yes.  
 21 **Q. Okay. Were you here for the testimony of Professor Kern**  
 22 **Ewing?**  
 23 A. I was.  
 24 **Q. Okay. And he spoke -- he spoke about buffering of Ravenna**  
 25 **Park.**

1 **with a general overview of how the potential adverse impacts**  
 2 **to environmentally critical areas were analyzed?**  
 3 A. Sure. The -- the methodology?  
 4 **Q. Yes.**  
 5 A. So the city worked -- the city and ESA worked to develop an  
 6 assessment methodology that started with establishing  
 7 existing conditions. So we used the city's existing mapping  
 8 of environmentally critical areas, and overlaid that with  
 9 the GIS layers. That mapping is also in GIS. And we  
 10 overlaid that with the GIS layers provided to us by the city  
 11 of the proposed study area in urban villages and expansion  
 12 areas, and we determined the current acreage of individual  
 13 environmentally critical areas within the urban villages.  
 14 And then we overlaid the proposed changes and the zoning  
 15 designations specifically in the expansion areas of the  
 16 urban villages.  
 17 And then we made a -- a qualitative assessment of what the  
 18 potential impacts would be in those expansion areas.  
 19 **Q. Okay. In assessing the impacts of the expansion areas, was**  
 20 **that the focus of the impact analysis?**  
 21 A. It was. It was -- when we were determining the assessment  
 22 methodology, we identified that the expansion areas  
 23 represented a changing variable of the proposed program.  
 24 Areas within the existing urban villages are under a  
 25 certain level of development pressure currently, and that's

1 **So just so we're crystal clear, are Seattle's parks one of**  
 2 **the listed environmentally critical areas?**  
 3 A. No. Park -- parks per se are not an environmentally  
 4 critical area. You could have areas within a park that  
 5 are -- meet the definition of an environmentally critical  
 6 area.  
 7 **Q. And an example of that would be Ravenna Park, correct?**  
 8 A. Yeah.  
 9 **Q. Okay. And so within Ravenna Park, are there designated**  
 10 **environmentally critical areas?**  
 11 A. Yes, there are.  
 12 **Q. And the proposal under any of the alternatives is not --**  
 13 **that's -- it's not proposing to -- well, the study area**  
 14 **doesn't extend into Ravenna Park or the critical areas**  
 15 **within Ravenna Park; is that correct?**  
 16 A. Yeah. Not to my knowledge.  
 17 **Q. Okay. Okay. And again, just a clarifying question, city**  
 18 **trees are also not designated as environmentally critical**  
 19 **areas; is that correct?**  
 20 A. Correct.  
 21 **Q. Okay. But if a tree -- are there regulations in place if a**  
 22 **tree were within an environmentally critical area?**  
 23 A. Correct.  
 24 **Q. Okay. Let's turn to the environmentally critical areas**  
 25 **impact analysis that you authored. Can you just provide us**

1 considered an -- an existing condition.  
 2 Similarly, areas that are multifamily zoned or commercial  
 3 zoned are also under some development pressure currently.  
 4 But those areas that are in the proposed expansion areas  
 5 would see a change in development pressure with the  
 6 proposal, and so that's why we focused on those areas for  
 7 the environmentally critical areas analysis.  
 8 **Q. Okay. So I think I heard you say that the analysis began**  
 9 **with identifying the existing conditions.**  
 10 **How were the existing conditions identified? And you**  
 11 **talked about it a bit. But if you could elaborate on that.**  
 12 A. Right. So the -- the city's mapping -- we could turn to --  
 13 I guess we could turn to the -- to the table.  
 14 **Q. Yeah.**  
 15 A. But the city's mapping identifies --  
 16 **Q. Why don't we -- why don't we take out the environmental**  
 17 **impact statement, which is in I think that binder. It's**  
 18 **Exhibit 2.**  
 19 **Okay. Did you want to turn to a specific exhibit for --**  
 20 **to talk about what you're going to describe? The existing**  
 21 **conditions are identified on page 3.319.**  
 22 A. Right. On page 3.320 the individual types of  
 23 environmentally critical areas are in a bulleted list at the  
 24 top of the page. So those areas are -- have been identified  
 25 from a variety of sources that are available as GIS layers.

Page 45

1 was drawn to avoid -- to have less intersection with them?  
 2 A. Yes, I believe it was.  
 3 **Q. Okay. All right. And on page 3.337, there's another,**  
 4 **Exhibit 3.6-14. And can you describe that?**  
 5 A. This exhibit shows the amount of ECAs within the four  
 6 neighborhood types under the preferred alternative, so it  
 7 shows the existing urban villages as previous exhibits, and  
 8 then the amount of ECAs within the expansion areas.  
 9 **Q. And these exhibits on page 3.337 were prepared specifically**  
 10 **for the -- well, were they in the draft environmental impact**  
 11 **statement?**  
 12 A. They were not. This -- this -- this section entirely was  
 13 new in the FEIS.  
 14 **Q. And that's because the preferred alternative -- I guess I**  
 15 **should ask. Why was this section not included in the DEIS?**  
 16 A. The preferred alternative was developed based on information  
 17 received on the draft EIS.  
 18 **Q. And so there were -- we walked through some maps for**  
 19 **alternative 2 and alternative 3.**  
 20 A. Uh-huh.  
 21 **Q. Was the decision made not to add maps for the preferred**  
 22 **alternative?**  
 23 A. That's correct.  
 24 **Q. Okay.**  
 25 A. The -- the --

Page 46

1 **Q. Can you speak to that?**  
 2 A. Sure. The maps that were developed for alternative 2 and  
 3 for alternative 3 were considered book -- bookends on the --  
 4 the impacts that are -- that are under the preferred  
 5 alternative. And those areas are shown on the existing  
 6 maps.  
 7 **Q. They showed the intersection of mapped ECAs already that**  
 8 **were identified for the preferred alternative; is that**  
 9 **correct?**  
 10 A. That's correct.  
 11 **Q. Okay. And so overall, is it -- well, actually, let me ask.**  
 12 **This methodology -- have you used this methodology for**  
 13 **previous non-project environmental impact statements that**  
 14 **you've prepared?**  
 15 A. Yeah. Using existing mapping where you have a project that  
 16 covers a very large area is a common way to objectively  
 17 identify changes or -- and potential impacts.  
 18 **Q. Okay. And so overall, is it your opinion, based on your**  
 19 **experience and expertise, that the environmentally critical**  
 20 **area impact analysis was reasonable in its scope, and level**  
 21 **of detail, and adequate for this non-project MHA EIS?**  
 22 A. Yes, it is.  
 23 **Q. Okay. We're going to -- we're going to shift gears. You**  
 24 **mentioned that -- do you have -- are you familiar with the**  
 25 **city's current tree regulations?**

Page 47

1 HEARING EXAMINER: With that transition, let's take a  
 2 break.  
 3 MR. MITCHELL: Yeah.  
 4 HEARING EXAMINER: Back at 10:35.  
 5 (Recess)  
 6 MS. BENDICH: This is Judith Bendich on behalf of Friends  
 7 of --  
 8 HEARING EXAMINER: When we return, it was Ms. Logan on  
 9 direct.  
 10 MS. BENDICH: Oh, I'm sorry. I didn't realize you weren't  
 11 done. You were going to trees. I'm so sorry.  
 12 MR. MITCHELL: That's okay. Yeah.  
 13 **Q. (By Mr. Mitchell) We were shifting gears before the break**  
 14 **just to talk about Seattle's tree protection regulations.**  
 15 **In your work at Environmental Science Associates, have you**  
 16 **worked on projects where you've applied Seattle's tree**  
 17 **regulations?**  
 18 A. Yes, I have. We do a fair bit of work for the Seattle  
 19 public schools, and those projects frequently are -- and in  
 20 around large trees, and they -- whether it's a redevelopment  
 21 of a school or --  
 22 **Q. Okay.**  
 23 A. That tends to come up a lot.  
 24 **Q. I'd like to turn to what's been marked as Hearing Examiner**  
 25 **Number 77, 77. Oh, I'm sorry. So ours, ours at 60, and**

Page 48

1 **that's City's Number 60.**  
 2 UNIDENTIFIED MALE: Are you marking that?  
 3 MR. MITCHELL: It's already -- it's already an exhibit.  
 4 MS. BENDICH: It's already (inaudible).  
 5 UNIDENTIFIED MALE: I'm sorry.  
 6 MR. MITCHELL: Yeah.  
 7 MS. BENDICH: It's 77 for the Hearing Examiner.  
 8 UNIDENTIFIED MALE: Oh, 77. You want to see it?  
 9 MS. BENDICH: I don't know what it is.  
 10 HEARING EXAMINER: Go ahead, please.  
 11 **Q. (By Mr. Mitchell) Okay. I'm not sure if it's been located,**  
 12 **but I'll -- do you recognize this document?**  
 13 A. Yes, I do. It's a Seattle Tip 242 explaining tree  
 14 protection regulations in Seattle.  
 15 **Q. Okay. And so we just heard from Nolan Rundquist about the**  
 16 **regulations pertaining to street trees. Is this an overview**  
 17 **of the regulations that protect trees on private property?**  
 18 A. Correct. Yeah.  
 19 **Q. Okay. So can you -- let's see -- so on page 1 of the**  
 20 **document, do you see that -- the heading determining which**  
 21 **regulations apply to you?**  
 22 A. Yes.  
 23 **Q. Are those bullets -- do they describe the factors that you'd**  
 24 **look at to determine what tree protection requirements would**  
 25 **apply?**

1 HEARING EXAMINER: And the new tab we're going to?

2 MR. MITCHELL: We're going to tab 61.

3 **Q. (By Mr. Mitchell) Okay. Do you recognize what's been marked**

4 **as exhibit -- well, actually, can I --**

5 MR. MITCHELL: Has this been marked?

6 HEARING EXAMINER: Marked as 226.

7 MR. MITCHELL: Thank you.

8 (Exhibit No. 226 marked for identification)

9 **Q. (By Mr. Mitchell) Do you identify -- or can you -- do you**

10 **recognize what's been marked as Exhibit 226?**

11 A. I do. It's another Director's Rule. This is 30-2015, and

12 the subject is Standards For Landscaping, Including Green

13 Factor.

14 **Q. Okay. And does the -- on page 1 in the background in purple**

15 **section, does it describe what this Director's Rule is**

16 **clarifying or providing information about?**

17 A. It says, This rule provides information about the city's

18 landscape requirements, including green factor.

19 **Q. Okay. And then does the Director's Rule then go on on page**

20 **2 through 16 to talk about the general standards of the rule**

21 **as applied to the green factor?**

22 A. That's correct. It includes standards about soil quality,

23 depth and volume, plant selection, preservation, and so on.

24 **Q. And then --**

25 A. (Inaudible).

1 areas; and then trees that are considered exceptional, or at

2 least are being considered whether or not they meet the

3 criteria for exceptional.

4 But other types of -- kind of landscaping and things I

5 think that are within the land use code are -- I don't have

6 experience with.

7 MR. MITCHELL: Okay. Well, I don't have any further

8 questions.

9 HEARING EXAMINER: Cross?

10 MS. BENDICH: Now it's my turn. Sorry. This is Judith

11 Bendich for friends of Ravenna-Cowan.

12

13 CROSS-EXAMINATION

14 BY MS. BENDICH:

15 **Q. And you mentioned that you were here for Professor Kern**

16 **Ewing's testimony; is that correct?**

17 A. I was.

18 **Q. Regarding --**

19 A. Correct.

20 **Q. Regarding Ravenna Park?**

21 A. Correct.

22 **Q. Prior to his testimony, had you ever visited Ravenna Park?**

23 A. I have.

24 **Q. You have. Does the EIS Chapter 3.6 discuss Ravenna Park?**

25 A. I don't believe it does specifically.

1 **Q. -- then was the next one new trees?**

2 A. Yes, new -- new trees.

3 **Q. Okay. Okay. And what information is the green factor**

4 **providing regarding new trees?**

5 A. Sure. It includes information about determining the size

6 categories of a tree species, I guess in -- in proposed

7 areas, the size at the time of installation. It includes

8 information on identification of trees and spacing of trees.

9 **Q. Okay. And so in your experience applying these Seattle tree**

10 **regulations that we've discussed, have you had the**

11 **experience of the regulations preserving trees on property?**

12 A. Yes. In -- in my experience, I guess the -- the -- the part

13 of all the things we've discussed the -- that I've the most

14 experience with is the exceptional tree -- the application

15 of the exceptional tree requirements and that Director's

16 Rule.

17 **Q. Okay.**

18 A. So I've seen those applied for a variety of projects.

19 **Q. We didn't really talk about the land use chapter. But**

20 **are -- do you have an understanding of what the tree**

21 **protections are in the land use code when it comes to tree**

22 **protection?**

23 A. Somewhat. But not -- I've -- the -- the tree protection

24 information is typically related to critical -- or

25 experience that I have is typically related to critical

1 **Q. Okay.**

2 A. Could be wrong.

3 **Q. Does the Chapter 3.6 discuss the cumulative impact of**

4 **upzoning on critical -- excuse me, ECAs outside of the urban**

5 **villages?**

6 A. It does mention cumulative impacts, I believe.

7 **Q. Would you point that out?**

8 A. Yes.

9 **Q. The extent to which it says cumulative impacts.**

10 A. On page 3.3 -- sorry. Yeah, 3.323.

11 **Q. Okay. Let's refer to the preferred alternative.**

12 A. Yes. These are the impacts of alternative to which -- in

13 the preferred alternative you refer back to this --

14 **Q. Okay.**

15 A. -- description.

16 **Q. No. Go ahead. Three point -- would you say that again?**

17 A. Sure. 3.323.

18 **Q. Okay. And what are you referring to?**

19 A. And I'm -- I'm looking at the -- the paragraph under After

20 Construction. We talk about future possible activities on

21 residential or commercial properties --

22 **Q. Could you read it specifically so I understand where you**

23 **are?**

24 A. Yeah. The beginning of the -- the first paragraph, under

25 the heading After Construction, Even after construction for



MEFFORD, Chris

Page 105

1 UNIDENTIFIED SPEAKER: Sorry, I should have earmarked it.  
 2 A. Okay. Thank you.  
 3 **Q. (By Mr. Weber) So this -- the top of the page reads**  
 4 **"Objectives of the Proposal"?**  
 5 A. Uh-huh.  
 6 **Q. So can you read the second bullet there.**  
 7 A. "Increase overall production of housing to help meet current  
 8 and projected high demand."  
 9 **Q. And then could you read the third bullet.**  
 10 A. "Leverage development to create at least 6,200 net new-rent  
 11 and income-restricted housing units serving households at 60  
 12 percent of the Area Median Income, AMI, in the study area  
 13 over a 20-year period."  
 14 **Q. So in your view, does attaining those two objectives that**  
 15 **you just read depend on projects being feasible even after**  
 16 **the imposition of the MHA requirements?**  
 17 A. Sure.  
 18 **Q. And in your opinion, are the requirements, the MHA**  
 19 **requirements proposed in the EIS consistent with obtaining**  
 20 **those objectives from a feasibility standpoint?**  
 21 A. Yes.  
 22 **Q. Can you explain why?**  
 23 A. Well, those requirements in the MHA, which are to either ask  
 24 a developer to build a certain number of affordable units or  
 25 to give money so that someone else can build those units,

Page 106

1 are deemed to create affordable housing units that wouldn't  
 2 otherwise happen were it not for those policies.  
 3 **Q. From a feasibility standpoint, is the idea that the MHA**  
 4 **requirement is not preventing projects from obtaining**  
 5 **feasibility?**  
 6 A. That's correct, and that was -- that was how our analysis  
 7 would have been used. We would have done the analysis  
 8 objectively and agnostic as to how that information would be  
 9 used, but it would be used to set those requirements so as  
 10 to not deter the market from developing the projects that we  
 11 modeled.  
 12 **Q. Uh-huh. So I believe you've reviewed testimony from a**  
 13 **number of the appellants' witnesses, and they've suggested**  
 14 **that the EIS here should have evaluated alternatives with**  
 15 **higher MHA requirements. Given the objectives you read and**  
 16 **the analysis you did, in your opinion was it reasonable for**  
 17 **the city not to include alternatives with higher MHA**  
 18 **requirements?**  
 19 A. Well, the analysis that we gave the city was representative  
 20 enough, in enough detail and a spectrum of (inaudible)  
 21 there, that the city can infer a broad range of implications  
 22 from those inputs. So those ranges that were shown in the  
 23 EIS before they were discussed -- I think 2.19 was the page  
 24 that -- where that table was -- certainly are consistent  
 25 with the range of feasibility -- range of settings of those

Page 107

1 affordability requirements that map within the feasible  
 2 bounds of what we analyzed.  
 3 **Q. So can you describe what factors would influence whether it**  
 4 **was reasonable to impose higher requirements than were**  
 5 **proposed in the EIS? How would you look at that?**  
 6 A. Right. So the crux of the MHA policies, as I interpret  
 7 them, is to require the development of or to contribute  
 8 money toward the development of affordable housing units  
 9 from developers that are in the market choosing to do a  
 10 development at their own initiative. And the reason why  
 11 those affordability requirements are in place is because  
 12 we're not seeing those affordable units being built on their  
 13 own.  
 14 If affordable housing units were being built on their own,  
 15 then there wouldn't be a problem and there wouldn't be a  
 16 need for a mandatory housing and affordability program.  
 17 So you have to work with the developers you have, and the  
 18 developers need to have a certain amount of profit or  
 19 incentive to do a development or you're going to scare them  
 20 all away. And I think of this policy setting as a numbers  
 21 game. If you think of the developers, there's a risk of  
 22 overgeneralizing all developers. There's a broad spectrum  
 23 of all kinds of developers that are interested in building  
 24 housing and mixed-use developments in Seattle.  
 25 And you want to set those numbers, in my opinion, or the

Page 108

1 policy in terms of the feasibility implications, what you're  
 2 asking about, the goal is to push those ranges up, the  
 3 affordability requirements, at a reasonable level that it  
 4 doesn't scare away too many of the developers. And the  
 5 closer you push up -- the higher up you push the  
 6 affordability requirements, then the less profit you're  
 7 going to leave in the development opportunity, and therefore  
 8 the fewer developers are going to be interested in building  
 9 in Seattle with those requirements.  
 10 So the challenge is to choose that number that doesn't --  
 11 the number being the affordability requirements -- that  
 12 doesn't cut too close to the bone on profitability. Doing  
 13 policy analysis to set policies with real estate inputs is  
 14 challenging because the real estate inputs change very  
 15 rapidly over time. Market rents fluctuate, market  
 16 conditions fluctuate.  
 17 So when you set a policy that has a shelf life longer than  
 18 a few weeks, you have to be careful to not push those  
 19 restraints too high or you'll stop all development,  
 20 hypothetically.  
 21 **Q. So I think you reviewed the testimony of Mr. Levitus,**  
 22 **correct?**  
 23 A. I did. I can't remember the names in the testimony,  
 24 necessarily, but I do -- but I did.  
 25 **Q. So he suggested that other jurisdictions have higher**

Page 109

1 requirements akin to the MHA requirements, maybe up to 20  
 2 or 25 percent. Do you think that the experience of other  
 3 jurisdictions or the numbers that they have chosen  
 4 necessarily mean that 20 or 25 percent or higher  
 5 requirements would have been appropriate for Seattle?  
 6 A. You cannot take that in isolation. You cannot simply look  
 7 at the number of units required or the percentage of units  
 8 that are required or the dollar fees that's required and  
 9 compare that across jurisdictions by only that one  
 10 criterion. There are a lot of other variables in  
 11 development decision-making. In some places where  
 12 development costs might be lower, pushing those ranges  
 13 higher might have less of an impact on feasibility.  
 14 In Seattle where development costs, relatively speaking,  
 15 are higher, you get more and more sensitivity the higher you  
 16 push those numbers up. So that's just a way to explain you  
 17 cannot compare jurisdiction on those two settings alone,  
 18 affordable housing units with percent fees.  
 19 Q. So earlier we looked at the chart in your report that showed  
 20 how the various prototypes in the various cost areas sort of  
 21 played out relative to land values. I mean, how would you  
 22 characterize sort of where the balance was struck here? Is  
 23 it a good middle-of-the-road approach? How would you  
 24 characterize that?  
 25 A. I think it's a very good middle-of-the-road approach. We

Page 110

1 strived to show a number on -- or to demonstrate how the  
 2 numbers play out to serve the city of the data that the city  
 3 staff needed to set those numbers to be indifferent, right?  
 4 So we wanted the -- we had two objectives. We knew that  
 5 the city had two objectives in using our analysis, and so we  
 6 wanted our analysis to help the city in that -- in the  
 7 decision-making around those two objectives.  
 8 One objective was to not push the MHA requirements so high  
 9 as to discourage too much of the development that the city  
 10 wants to get. And the other objective is to help the city  
 11 set those rates on the build or pay options to be rather  
 12 indifferent. You want those to be indifferent that the --  
 13 that the developers are just as willing to build affordable  
 14 housing units themselves as they would be to pay those fees.  
 15 So we knew that those were objectives to be considered  
 16 with our analysis when we strived to have our analysis serve  
 17 that decision-making.  
 18 Q. And had the city proposed substantially higher requirements  
 19 than are evaluated in the alternatives in the EIS, do you  
 20 think there would have been a risk of going too far?  
 21 A. Sure. And then we would have had that conversation with  
 22 city staff, and we would have gone back and forth until we  
 23 found numbers that we thought matched the feasibility range  
 24 to serve this conversation. And we went further, to give  
 25 the models to the city staff so they could continue to work

Page 111

1 with it.  
 2 Q. So if you could turn to page 2.64 of the EIS.  
 3 HEARING EXAMINER: 2 point what? I'm sorry.  
 4 MR. WEBER: Page 2.64.  
 5 Q. (By Mr. Weber) So the heading here in 2.4: "Alternatives  
 6 Considered But Not Included in the Detailed Analysis?" So  
 7 have you reviewed that section of the EIS?  
 8 A. Yes.  
 9 Q. And does it discuss why an alternative with requirements  
 10 of 25 percent was not evaluated?  
 11 A. Yes.  
 12 Q. And do you agree with the conclusion of that section as to  
 13 what the effect of a 25 percent requirement on feasibility  
 14 would have been?  
 15 A. Would you say that again, please?  
 16 Q. Well, actually, let's go to the EIS for a second.  
 17 A. All right.  
 18 Q. On page 2.65 --  
 19 A. Yeah.  
 20 Q. -- at the bottom of the paragraph that --  
 21 A. All right. Yeah.  
 22 Q. -- is about in the middle of the page, it says, "However,  
 23 the finding." Could you read that sentence.  
 24 A. "However, the finding that a 25 percent requirement would  
 25 render most development prototypes in strong and moderately

Page 112

1 strong markets infeasible given prevailing land prices  
 2 suggests that an alternative within this approach would not  
 3 plausibly achieve the proposed objectives."  
 4 Q. And do you agree with that?  
 5 A. Yes.  
 6 Q. So as you know from the appellants' testimony, there were a  
 7 number of Appellants who suggested that the EIS should have  
 8 evaluated alternatives with requirements that were between  
 9 the level that are proposed and a 25 percent level. What --  
 10 I know your report didn't look at those numbers, but can you  
 11 give us a sense, based on your report and your experience,  
 12 what would have been shown had you evaluated rates  
 13 between 11 and 25 percent?  
 14 A. Sure. And it's almost shown in our report, but it's -- and  
 15 it's almost obvious that by increasing those requirements up  
 16 toward 25 percent you're going to decrease the feasibility  
 17 of each of the prototypes that we analyzed.  
 18 Q. So it's sort of a continuum --  
 19 A. That's right.  
 20 Q. -- of the results becoming more and more unfeasible?  
 21 A. That's right. I mean, we've shown that building affordable  
 22 housing is less profitable towards developers, and we know  
 23 that profit is an incentive. So increasing the affordable  
 24 percentage of a development will decrease the profitability  
 25 of that development, in most cases.

Page 113

1 **Q. So there are many inputs and assumptions in your model,**  
 2 **correct?**  
 3 A. Right.  
 4 **Q. And can you discuss, in light of that, you know, what would**  
 5 **have been gained at what cost had the city tried to**  
 6 **construct alternatives at 15 percent and 17 percent and 21**  
 7 **percent, for example?**  
 8 A. Had those percentages been set at a higher rate, then you  
 9 risk being aggressive in getting requirements from  
 10 developers during a period of time when the real estate  
 11 market is strong. And if the real estate market doesn't  
 12 stay as strong as it is when you make those settings, then  
 13 those settings of affordability requirements and  
 14 expectations end up being more burdensome than you had  
 15 analyzed.  
 16 So, again, you want to fall off of -- you're not trying to  
 17 take every penny of profit and send it away from the  
 18 developers to build these. You want to find a good sweet  
 19 spot, where there's an incentive to build and enough of a  
 20 requirement to get something out of that development that  
 21 would otherwise happen without affordable housing.  
 22 **Q. So is it correct, it sounds like the risk calculus wouldn't**  
 23 **be that different had you looked at a number of different**  
 24 **numbers in that continuum?**  
 25 A. Right. And, like I said, I mean, our models allowed city

Page 114

1 staff to play with those behind the -- as they chose, went  
 2 to the right settings to move forward with, so those -- it  
 3 was rather easy to infer and the impact on feasibility to go  
 4 from the numbers that are in the EIS up to that 25 percent  
 5 number.  
 6 **Q. So one of the appellants' witnesses, Mr. Sherrard, made the**  
 7 **suggestion that the EIS should have evaluated alternatives**  
 8 **with higher requirements for particular prototypes, for**  
 9 **which he suggested that your report said that higher**  
 10 **requirements would be possible. Do you agree with that?**  
 11 **And if not, why not?**  
 12 A. Well, if I recall, he was referring to those -- back in that  
 13 exhibit with the yellow, green and blue shaded areas, where  
 14 those yellow dots are, way higher than the yellow range.  
 15 And I think that's -- those are the developments that he was  
 16 referring to. I would disagree with that statement of his.  
 17 The reason why is because that yellow shaded area is  
 18 important. That's the price that the sellers are willing to  
 19 sell for. And so even if there's exorbitant profits that a  
 20 developer can get, that developer's not going to be willing  
 21 to pay for any -- is not going to wish to pay any more for  
 22 land than what the sellers are willing to offer it for.  
 23 And at that point, as well, then you can start -- a  
 24 developer can start to look around at other communities to  
 25 do investment outside of the City of Seattle. There are

Page 115

1 some developers that are completely comfortable going all  
 2 over the world with their development.  
 3 So if that -- if those development -- if a builder can  
 4 build those development prototypes that show such great  
 5 profits and that opportunity exists elsewhere, then they're  
 6 going to compare that elsewhere as well. So it's not the  
 7 case that you can just push up in those areas to, like I  
 8 say, cut to the bone of profitability. It's just  
 9 unrealistic that that's the way the decision-making goes.  
 10 **Q. So one of the variables that's in play here is obviously**  
 11 **land values. And does the fact that land values might go up**  
 12 **necessarily mean that higher affordable housing requirements**  
 13 **are justified from a feasibility standpoint?**  
 14 A. The fact that land does go up, does -- no, because there's  
 15 just lots of other -- other variables, right? So, again,  
 16 it's market specific. If land values go up, there might be  
 17 other drivers as to what that land values might be. But I  
 18 wouldn't necessarily correlate that exactly.  
 19 **Q. And one (inaudible) interest in rents, I assume?**  
 20 A. Right, yeah, absolutely. Rents and costs, right? So  
 21 development costs, costs of copper and lumber fluctuate,  
 22 right?  
 23 **Q. And is it necessarily the case that rents and land values**  
 24 **always move in exactly the same way relative to each other?**  
 25 A. Most definitely not.

Page 116

1 MR. WEBER: So I'd move for introduction of -- or  
 2 admission of Exhibit 229.  
 3 UNIDENTIFIED SPEAKER: No objection.  
 4 HEARING EXAMINER: 229 is admitted.  
 5 (Exhibit No. 229 admitted into evidence)  
 6 **Q. (By Mr. Weber) So moving to another subject, I think you've**  
 7 **already said but just to confirm, under this proposal,**  
 8 **developers have a choice between actually providing the**  
 9 **units as part of their project or making a payment, correct?**  
 10 A. That's right.  
 11 **Q. And we heard from Mr. Levitus that he thought that there**  
 12 **were nonmonetary reasons why developers would generally, in**  
 13 **his view, choose to make the payment unless there was a**  
 14 **strong disincentive to do that. And I'm interested in**  
 15 **whether you think that's a general rule, an accurate**  
 16 **statement?**  
 17 A. I think it's overstated. I think, again, there's a broad  
 18 spectrum and diversity of the types of developers. And  
 19 certainly in my work, we've encountered many developers that  
 20 appreciate the need for affordable housing units in Seattle  
 21 that have a better diverse economy and are willing to do  
 22 their best to provide affordable housing units.  
 23 **Q. So if you could turn to Binder 8, Tab 129.**  
 24 MR. WEBER: And I'll ask to have that marked.  
 25 HEARING EXAMINER: This will be 230.

Page 117

1 (Exhibit No. 230 marked for identification)

2 **Q. (By Mr. Weber) So, Mr. Mefford, could you tell us what this**

3 **is?**

4 **A.** Yes. This is a spreadsheet that leads up to an

5 understanding of the equivalence between the performance

6 percentage expressed in how many affordable units are built

7 as a percentage of the total property versus the

8 pay-per-square-foot option across the three market

9 scenarios. So that number (inaudible) particular to the

10 table at the bottom of the page, and you might think of the

11 numbers in that table as -- as the numbers of indifference,

12 right? So the developer ought to be economically

13 indifferent to either the building of affordable units as a

14 percentage shown on the left versus paying those fees in the

15 middle. And then everything up above it are the inputs that

16 go into that finding.

17 **Q. And can you give just a little explanation of the chain of**

18 **analysis that --**

19 **A.** Sure.

20 **Q. -- got you from A to B?**

21 **A.** I certainly can. What you see here on the upper part are

22 really most of the inputs that go into a pro forma model of

23 feasibility. And "pro forma" simply means it's a -- it's a

24 model, meaning it's an approximation of data in an analytic

25 set we would expect to see come from having built this,

Page 118

1 right?

2 As I said before, the real estate map is actually pretty

3 simple and transparent. You can orient it a number of ways.

4 This particular way of modeling the real estate data and map

5 for decision-making tries to get at the delta; the

6 difference between doing a development at all the

7 market-rate units possible versus doing affordable housing.

8 And it looks at that delta in between the two and says

9 there's a profitability difference. And if a developer is

10 able to make more profits by not doing any affordable units

11 compared to doing all affordable units, then what if we

12 varied that in-between at 10 percent affordable units, 15

13 percent affordable units, and so forth. So it tries to

14 adjust that profit delta based on the percentage of that

15 development that goes towards affordable housing.

16 **Q. So to sort of --**

17 **A.** Yep.

18 **Q. -- cut to the punch line: Given the methodology that the**

19 **city used here to relate the performance and the payment**

20 **amount and given the other factors that go into developers'**

21 **calculations, I mean, would you expect most developers to**

22 **pay, or would you expect an equal balance of payment versus**

23 **performance, or would you expect something else?**

24 **A.** Well, this -- the very nature of this is meant to make an

25 equal balance, to make them economically indifferent as to

Page 119

1 which way they go.

2 I will say that, if anything, in my judgment, this

3 actually leans them towards the performance side a little

4 bit because of the way operating costs are treated. This

5 holds operating costs the same for lower-priced housing

6 versus higher-priced housing. And that's a fair assumption

7 of policy analysis, but I'd say it's rather conservative in

8 nature towards the point of this, in a sense that lower-cost

9 housing and operating costs would be expected to be less

10 (inaudible).

11 So, again, the point is to make it as indifferent as it

12 can be. If anything, it's conservative towards -- towards

13 the performance op.

14 **Q. So based on all of that, the EIS's assumption of the 50/50**

15 **split between performance and payment, does that strike you**

16 **as a reasonable assumption for an EIS?**

17 **A.** Absolutely, yeah.

18 **MR. WEBER:** So I'd like to move for admission of

19 Exhibit 230.

20 **MR. BRICKLIN:** Can I ask one voir dire question about this

21 first regarding foundation?

22 **HEARING EXAMINER:** (No audible reply).

23

24 //

25 //

Page 120

1 **VOIR DIRE EXAMINATION**

2 **BY MR. BRICKLIN:**

3 **Q. Did you prepare this document?**

4 **A.** I did not.

5 **Q. Was it somebody in your office?**

6 **A.** No. I believe city staff did.

7 **Q. Were you involved in the development of it?**

8 **A.** Yeah, this reflects work that we did. There were certainly

9 interim meetings with city staff to discuss how our work was

10 applied for this exhibit. And it's very transparent. I

11 mean, it's -- to me, it just reads right off the page.

12 **MR. BRICKLIN:** No objection. I'll pursue it on cross.

13 **Thanks.**

14 **HEARING EXAMINER:** Okay. 230's admitted.

15 (Exhibit No. 230 admitted into evidence)

16 **HEARING EXAMINER:** I do want to spend a little bit more

17 time on it if I could --

18 **THE WITNESS:** Oh, sure.

19 **HEARING EXAMINER:** -- because it doesn't leap right off

20 the page for me.

21 **THE WITNESS:** Yeah, sure.

22 **HEARING EXAMINER:** The bottom chart, if you could just

23 walk us through the elements of that. I understand the

24 background to it and the -- as it were, the punch line, as

25 Mr. Weber put it, but performance percentage, you said

Page 121

1 you're looking for the indifference. How is this showing  
 2 that? Just explain the chart if you can.  
 3 THE WITNESS: Absolutely. So let's look at the first  
 4 number, the shaded yellow, \$35.70. How you interpret that  
 5 is that in a high-market area, a developer ought to be as  
 6 willing to develop 12 percent of their building for  
 7 affordable housing units as they would be to pay \$35.70 for  
 8 every square foot of that development.  
 9 HEARING EXAMINER: And is the highlighted area that  
 10 indifference point you're looking for, or is there --  
 11 THE WITNESS: The whole table's indifference.  
 12 HEARING EXAMINER: What's the point of the highlighting?  
 13 THE WITNESS: The highlighting, I think, corresponds to  
 14 what's in the EIS.  
 15 HEARING EXAMINER: I see.  
 16  
 17 DIRECT EXAMINATION (Resumed)  
 18 BY MR. WEBER:  
 19 **Q. And, actually, Mr. Mefford, let's just go to page 2.19, and**  
 20 **we can show the Examiner how that works.**  
 21 A. Sure.  
 22 **Q. So, for example, if you look at -- can you tell us what**  
 23 **the 10 percent performance percentage in the high area, can**  
 24 **you tell us what the sort of indifference numbers are?**  
 25 A. Yeah, so the high area of 10 percent, \$29.75, is shown in

Page 122

1 both of those exhibits there.  
 2 **Q. So it says 10 percent and 29.75 --**  
 3 A. Uh-huh.  
 4 **Q. -- in Exhibit 230.**  
 5 A. Yes.  
 6 **Q. And then looking at page 2.19 of the EIS, in the matrix**  
 7 **here, in the high-area, does it also say 10 percent**  
 8 **and 29.75?**  
 9 A. That's right.  
 10 **Q. So that's what you meant when you said --**  
 11 A. That's right.  
 12 **Q. -- that the intent was to match these?**  
 13 A. That's right.  
 14 UNIDENTIFIED SPEAKER: And just to understand the  
 15 documents, which of these informs the other?  
 16 THE WITNESS: I would -- this one informs this one.  
 17 UNIDENTIFIED SPEAKER: Thank you.  
 18 MR. WEBER: Can I keep going?  
 19 HEARING EXAMINER: Could you state what you were pointing  
 20 to when you said "this"?  
 21 THE WITNESS: Oh, yeah, sure.  
 22 HEARING EXAMINER: Sorry, it's for the record.  
 23 THE WITNESS: Well, I'm not keeping up with your naming --  
 24 HEARING EXAMINER: This chart is Exhibit 230.  
 25 THE WITNESS: Okay. So Exhibit 230 informs --

Page 123

1 HEARING EXAMINER: The EIS.  
 2 THE WITNESS: -- the EIS Exhibit 2-6.  
 3 HEARING EXAMINER: Thank you.  
 4 **Q. (By Mr. Weber) So did you review the testimony of William**  
 5 **Reid?**  
 6 A. Yes.  
 7 **Q. So Mr. Reid felt that the EIS needed to more specifically**  
 8 **address ownership housing and particularly market-rate**  
 9 **ownership housing. Based on your experience, can the city**  
 10 **control whether development capacity is used per ownership**  
 11 **or rental housing? Or is that beyond the city's control?**  
 12 A. The city cannot control that.  
 13 **Q. And could you talk a little bit about whether there's any**  
 14 **difference in how that plays out in terms of different**  
 15 **development types? I mean, at the margin are there some**  
 16 **development types that are more likely to sort of be used as**  
 17 **ownership versus less?**  
 18 A. Right. Well, yeah, definitely. You know, in the  
 19 single-family market, we see that to be mostly ownership  
 20 type. There are rentals, of course, in a single-family  
 21 market. But the vast, large percentage of single-family  
 22 homes are owner-occupied, especially in Seattle. And in  
 23 multifamily, it can go either way, condominium,  
 24 owner-occupied units versus the rental-occupied units.  
 25 **Q. So from the standpoint of addressing housing affordability**

Page 124

1 **and what's been going on in the housing market --**  
 2 A. Yes.  
 3 **Q. -- how do you view the relative importance of the EIS**  
 4 **looking at ownership versus rental housing if the concern is**  
 5 **affordability?**  
 6 A. The number one cause of homelessness, as I understand it, is  
 7 increase in rents. And so above and away the -- if we view  
 8 housing affordability as a crisis right now, then allowing  
 9 more rental-occupied units with rents that are affordable is  
 10 the most impactful way to increase affordable housing.  
 11 MR. WEBER: That's all I have for Mr. Mefford.  
 12 HEARING EXAMINER: Thank you.  
 13 Cross?  
 14  
 15 CROSS-EXAMINATION  
 16 BY MR. BRICKLIN:  
 17 **Q. Just on that -- so let's start with that last one. You**  
 18 **haven't done any analysis of how this program were to impact**  
 19 **home ownership in Seattle, have you?**  
 20 A. Not for this study, no.  
 21 **Q. All right. Or rentals, for that matter?**  
 22 A. Well, all of our work we modeled was rentals.  
 23 **Q. Right. But it was about the feasibility of this fee. It**  
 24 **wasn't about how this proposal was going to impact the**  
 25 **availability of housing overall?**

**WILSON, Kate**

Page 181

1 you're looking big picture. You're describing the history,  
 2 the setting, so both environmental studying and the -- what  
 3 you -- the history of the area, I guess, is what I would  
 4 say, yeah.  
 5 **Q. Okay. And so you talked about looking at the recorded**  
 6 **resources in the study area. So going back to your general**  
 7 **description of what those resources are, is that what you**  
 8 **did here? Is that kind of where you started?**  
 9 A. Yeah, we talked about, "Okay, what are our data sets that we  
 10 can look at that are an accurate description of the study  
 11 area?" So we talked about using the state data. We talked  
 12 about using the city's; they have a historical sites survey  
 13 database of their inventoried properties, the 5,000 that I  
 14 referred to previously. We talked about looking at  
 15 annexation dates of the city to present a context of how the  
 16 city has grown; to look at potential areas with older  
 17 properties rather than areas with newer properties to do  
 18 some comparison. So we -- we considered our data sources.  
 19 We came up with a reasonable approach of how to describe the  
 20 affected environment in an equal way across the study area.  
 21 **Q. Okay. And we'll get into some more detail about that in a**  
 22 **minute. Now, I'm not sure and you might have mentioned it,**  
 23 **but -- so data sources, did that include kind of, again, the**  
 24 **range of city, state, federal data out there?**  
 25 A. Uh-huh. We looked at DAHP, the Department of Archaeology

Page 182

1 and Historic Preservation's website or their secure portal,  
 2 which is called "WISAARD," for the federal register  
 3 information, so the national register information, as well  
 4 as Washington Heritage Register information. We looked at  
 5 the landmarks listings. We looked at historic-context  
 6 statements that the city has prepared. As I said before, we  
 7 considered the city database as well.  
 8 **Q. Okay. All right. And in doing this work, did you work with**  
 9 **anyone at the city?**  
 10 A. We -- I met with Sarah Sodt from the Historic Preservation  
 11 program after the draft EIS. I contacted her by email in  
 12 the beginning for any information or suggestions.  
 13 I know there was a meeting prior to my involvement between  
 14 her and I think Sharese about potential information to use.  
 15 **Q. But you weren't a party to that?**  
 16 A. But I wasn't present for that, no.  
 17 **Q. Okay. And I might also ask: Have you done any other EIS**  
 18 **work related to the MHA program at all --**  
 19 A. No.  
 20 **Q. -- or the HALA program?**  
 21 A. No.  
 22 **Q. Okay. So you haven't been involved in any other EISs?**  
 23 A. Correct.  
 24 **Q. Okay. And so, again, how many times did you talk with**  
 25 **Ms. Sodt?**

Page 183

1 A. I only met with her once.  
 2 **Q. Okay. And you -- did you talk about what data was available**  
 3 **to you as part of your project or --**  
 4 A. That was conveyed, I think, at that first meeting that I was  
 5 not present for. And Sharese did send me an email saying  
 6 (inaudible) a summary of her meeting and that she had  
 7 mentioned they have historic-context statements, which I  
 8 already knew that I was going to look at, and she suggested  
 9 looking at the state data as well.  
 10 **Q. All right. And were you present for Ms. Sodt's testimony?**  
 11 A. Yes, I was.  
 12 **Q. Okay. And do you recall Ms. Sodt's discussion of the city**  
 13 **database?**  
 14 A. Yes.  
 15 **Q. And do you -- did you generally agree with her description**  
 16 **of the database?**  
 17 A. Yes.  
 18 **Q. Okay. And there was also some questions posed to Ms. Sodt**  
 19 **about some additional information that may be available in**  
 20 **their office, specifically information that resided in some**  
 21 **notebooks. Do you recall that?**  
 22 A. I recall that, yeah.  
 23 **Q. Okay. And are you familiar with those notebooks?**  
 24 A. No, I am not.  
 25 **Q. Okay. So you've never -- you've never looked at them or --**

Page 184

1 A. No, huh-uh.  
 2 **Q. All right. And they -- were they used in your work here?**  
 3 A. No. I did look at the 1970s maps that they have available  
 4 on their website, which I assume might be related to those  
 5 binders, but I did not look at those. I did not look at any  
 6 binders.  
 7 **Q. Okay. And is that -- it was the 1970s data and information**  
 8 **you relied upon in preparing your report?**  
 9 A. Not really, because it's so out of date.  
 10 **Q. Okay. And do you recall Ms. Sodt's testimony regarding the**  
 11 **dated material in the notebooks?**  
 12 A. Yes.  
 13 **Q. Okay. And she testified that -- she testified that**  
 14 **environmental review analysis really should only be about**  
 15 **five years old, at most.**  
 16 A. Uh-huh.  
 17 **Q. Do you agree with that statement?**  
 18 A. I -- I do agree. In my profession, we follow -- DAHP has  
 19 published guidelines for doing cultural resources reporting,  
 20 last updated January 2018. And they set a threshold of ten  
 21 years. If an inventory is over ten years old, it's  
 22 considered out of date and should be updated.  
 23 **Q. Okay. And -- I'm sorry.**  
 24 A. Oh, no, so that's -- that's something that we follow, and we  
 25 would -- if we see something that's over ten years old, we



Page 185

1 would give it less weight.

2 **Q. Okay. And Ms. Sodt also noted that -- the use of older data**

3 **requires some field verification; is that right?**

4 A. Yes.

5 **Q. Okay. And did you engage in any field verification?**

6 A. No.

7 **Q. Why not?**

8 A. Because this is a programmatic-level project -- or project

9 programmatic program, and to do any fieldwork would be not

10 appropriate.

11 **Q. Okay. And you've talked a little bit about the resources**

12 **that you looked at when preparing -- preparing the Historic**

13 **Resources section of the EIS. What does SEPA generally**

14 **require you to consider when you're doing this, in terms of**

15 **historic research?**

16 A. Uh-huh, you're supposed to consider properties that are

17 listed or eligible for listing on a national, state or local

18 register, so in this case landmarks, Seattle landmarks. So

19 districts as well as individual properties. So you are

20 supposed to consider them and consider potential impacts to

21 them.

22 **Q. Okay. So, again, it's an eligible property equivalent to an**

23 **inventoried property?**

24 A. No.

25 **Q. Okay. And is there a way to tell -- to tell the difference**

Page 186

1 **between an inventoried property and an eligible property?**

2 A. Yes. So an eligible property is property that has been

3 reviewed by a decision-maker so -- and a determination has

4 been made, so it would be properties that are in WISAARD

5 that have been flagged as being determined eligible or

6 properties that are listed.

7 If you're looking at the city's database, those properties

8 have not been determined. There's no determined bucket for

9 Seattle landmarks process. It's either a landmark or it's

10 not a landmark, so all those have not been determined.

11 **Q. Okay. So just to be clear, so you -- because you referred**

12 **back to WISAARD, and WISAARD has what? Is that the national**

13 **data?**

14 A. It has national data, yes, and state.

15 **Q. Okay. So the national and state data you can distinguish --**

16 **A. Yes.**

17 **Q. -- between an eligible property; is that right?**

18 A. That's correct.

19 **Q. Okay. But in the city database, there's no way to do that;**

20 **is that right?**

21 A. That's correct.

22 **Q. Okay. All right. And so the Historic Resources section is**

23 **organized kind of in four big parts. What are those?**

24 A. So first it's the -- the chapter?

25 **Q. Yeah.**

Page 187

1 A. Yeah, so it's the Affected Environment, the Potential

2 Impacts, then we have the Mitigation. And there's a fourth

3 one, but I'm not -- I'm blanking on it.

4 **Q. All right. Whether there --**

5 **A. Those are the big ones.**

6 **Q. -- there are significant impacts maybe?**

7 A. Yes, yeah.

8 **Q. Okay. So those are the four big buckets --**

9 **A. The Significant Unavoidable Impacts, yes.**

10 **Q. All right. So when you sat down to start doing your work**

11 **here, how did you determine the appropriate level at which**

12 **to describe and assess the affected environment?**

13 A. Sure. So I met with my director, and we discussed what a

14 programmatic EIS requires and the study area size. And we

15 looked at, you know, what is the available data. And we

16 looked at trying to find a complete comparable data set for

17 the study area. We looked at the -- we looked at the

18 information at DAHP, which is the federal and state

19 information. We determined that was the most complete

20 information to fairly describe the affected environment and

21 what (inaudible) historic resources side of the affected

22 environment.

23 **Q. And can you -- so who is your director?**

24 A. Oh, yes, Paula Johnson.

25 **Q. All right. And in terms of selecting kind of what you were**

Page 188

1 **going to use, you said you decided to use what again?**

2 A. The state's data, so the data at DAHP that's in WISAARD,

3 which is the national --

4 HEARING EXAMINER: I'm sorry, can you state that again?

5 The state what?

6 THE WITNESS: The state's data, which is in WISAARD. It's

7 the national register information and the state register

8 information.

9 HEARING EXAMINER: So what's the simple name for that?

10 THE WITNESS: WISAARD is what --

11 HEARING EXAMINER: State WISAARD?

12 THE WITNESS: WISAARD is -- yeah.

13 HEARING EXAMINER: Okay. And "WISAARD" is Washington

14 something --

15 THE WITNESS: Washington --

16 HEARING EXAMINER: -- something, something.

17 MR. JOHNSON: That's right.

18 THE WITNESS: -- Information System -- State Information

19 System For Archaeology, yeah, Database, something.

20 **Q. (By Mr. Johnson) And that -- and the WISAARD database**

21 **doesn't contain the city database; is that right?**

22 A. Correct, yes.

23 **Q. Okay. Now, did you just completely discount the city data?**

24 A. No. We looked at it and we thought about it, but there's

25 some issues with it that we decided it wouldn't be -- it

Page 189

1 would be -- there's gaps and it's also a little bit  
 2 misleading.  
 3 **Q. Okay. So let's get back to that, but you also -- you hit on**  
 4 **a lot of points in my last question, so I want to break it**  
 5 **up a little bit. So did you -- you talked about a**  
 6 **programmatic EIS. So just first of all, why does that**  
 7 **matter?**  
 8 A. Sure. So when you're looking at cultural resources, so  
 9 historic resources, archaeology as well, it's pretty  
 10 location-based. But when you're at a -- when you don't have  
 11 a direct project that's happening, you need to be more  
 12 general. It's very standard for cultural resource  
 13 discussions in EIS chapters that are programmatic to be at a  
 14 high level, because you -- you don't know exactly what would  
 15 be happening. You don't -- if it's a project-level EIS, you  
 16 can be more specific about your study area. But it's not  
 17 standard at all to go into any kind of fieldwork for a  
 18 programmatic EIS.  
 19 **Q. Okay. And then you also talked about the size of the study**  
 20 **area, I guess.**  
 21 A. Right.  
 22 **Q. So why does that matter?**  
 23 A. It matters because in terms of the level that you can really  
 24 go into, I mean, you need to try to fairly describe the  
 25 study area. And when you have a large study area, you --

Page 190

1 you're -- you have to be more general.  
 2 **Q. Okay. And then with regard to the study area itself, I**  
 3 **mean, your primary emphasis, was it in the urban villages?**  
 4 **Is that --**  
 5 A. We did look everywhere, but it was primarily in the urban  
 6 villages.  
 7 **Q. Okay. And how about -- did you look at the urban village**  
 8 **expansion areas?**  
 9 A. Yes.  
 10 **Q. Okay. And did you discuss the urban village expansion areas**  
 11 **in the EIS?**  
 12 A. Yes.  
 13 **Q. Okay. And could you just turn to page 3.306 of the EIS.**  
 14 **Are you there yet?**  
 15 A. Not yet.  
 16 **Q. And I'd just like you to look at the bottom page there, the**  
 17 **bottom of the page, the last sentence on the page, beginning**  
 18 **with the word "For." Do you see that?**  
 19 A. Yes.  
 20 **Q. Can you read that, please.**  
 21 A. "For the proposed expansion areas outside of urban villages,  
 22 the same estimated growth rate is anticipated under  
 23 alternatives 2, 3 and the preferred alternative, which is 24  
 24 percent."  
 25 **Q. Okay. And this is a discussion of growth rates, but is this**

Page 191

1 **an example of an area where you discussed the urban village**  
 2 **expansion areas?**  
 3 A. Yes.  
 4 **Q. Okay. And I'd also -- now, I'd like to take you back to**  
 5 **page 3.295.**  
 6 A. Okay.  
 7 **Q. Are you with me?**  
 8 A. Yes.  
 9 **Q. And you say here -- if you look under the heading, there's a**  
 10 **statement that says, "The history of the study area provided**  
 11 **here relies upon existing**  
 12 **neighborhood-specific-historic-context statements as**  
 13 **available."**  
 14 A. Uh-huh.  
 15 **Q. Can you just again remind us what a context statement is?**  
 16 A. Sure. A context statement is something that is prepared by  
 17 a historic preservation specialist that is an intensive  
 18 discussion of a particular area or theme, which is looking  
 19 at what are the characteristics of that theme or area, what  
 20 makes it significant, what are some potential representative  
 21 properties within that. So a historic-context statement is  
 22 a document that can also include fieldwork like inventoried  
 23 properties.  
 24 **Q. Okay. And how many historic-context statements are there in**  
 25 **Seattle, do you recall?**

Page 192

1 A. I believe there are 11, but I'd have to double-check. Well,  
 2 there's more than what was listed in the EIS. We only  
 3 listed the ones that were pertinent to the urban villages.  
 4 **Q. All right. So can you turn to page 3.302?**  
 5 A. Uh-huh.  
 6 **Q. And I'm referring to Exhibit 3.5-4 on that page.**  
 7 A. Yes, uh-huh.  
 8 **Q. And in the far right-hand column, there's a column that says**  
 9 **"Historic-Context Statement." Are those the context**  
 10 **statements that you reviewed?**  
 11 A. Yes, although there is one error. I also reviewed the North  
 12 Beacon Hill context statement, and I apologize if there was  
 13 some clerical error. This was checked off in an internal  
 14 draft prior to publication, so I'm not sure why that's not  
 15 listed here, but I did review that as well.  
 16 **Q. Okay. And were you here when Ms. Woo testified?**  
 17 A. Yes.  
 18 **Q. Okay. And she stated that there is a context statement for**  
 19 **North Beacon Hill that's not referenced. Is that what**  
 20 **you're referring to?**  
 21 A. Yes.  
 22 **Q. Okay. But you considered it, nonetheless?**  
 23 A. Yes.  
 24 **Q. And so in your professional opinion, I mean, is the fact**  
 25 **that you're missing that data point significant to your**

Page 193

1 **analysis?**  
 2 A. No, it doesn't change our goal or our findings, which was to  
 3 demonstrate that there are areas within the EIS study area  
 4 that do not have historic-context statements; that it is an  
 5 unequal level of information currently.  
 6 **Q. Okay. So expand. What are you referring to?**  
 7 A. Sure. So if an area has a historic-context statement, that  
 8 means that it's been inventoried as well. So it means that  
 9 someone has gone and looked at the properties in that area,  
 10 done the fieldwork, filled out forms, made suggestions on  
 11 eligibility, and then prepared a context statement. So  
 12 there's more information known about those locations. And  
 13 for areas on this exhibit that don't have a historic-context  
 14 statement, there's less information known.  
 15 **Q. Okay. And is there a set of data, other than context**  
 16 **statements or the properties listed in the historic survey**  
 17 **database, that are more consistent across the city?**  
 18 A. That -- that's why we looked at WISAARD.  
 19 **Q. Okay. Can you tell us --**  
 20 A. Yeah. So, yeah, so --  
 21 **Q. -- what's -- what's the implication of (inaudible)?**  
 22 A. We looked at WISAARD, the information at DAHP, because it  
 23 doesn't have these holes. It's citywide. It represents  
 24 information that has had a decision-maker review, took the  
 25 eligibility recommendation and they've made a determination.

Page 194

1 So that reflects properties that have been further along in  
 2 the process. And it -- we decided that it would more fairly  
 3 demonstrate distribution within the study area.  
 4 **Q. Okay. So can you turn the page to page 3.300 and 3.301.**  
 5 **This is Exhibit 3.5-2 and 3.5-3.**  
 6 A. Yes.  
 7 **Q. And first of all, can you just say what those are showing.**  
 8 A. Sure. These are maps that ESA prepared to show the  
 9 distribution of information that we obtained from WISAARD of  
 10 the determined eligible properties for the National Register  
 11 of Historic Places, and we overlaid those on the MHA study  
 12 area, urban villages, and potential expansion areas.  
 13 **Q. Okay. And so the green dots are what there?**  
 14 A. So -- oh, sorry -- so the green dots are the NRHP-determined  
 15 eligible properties.  
 16 **Q. But there are not very many dots, is that -- I mean, as**  
 17 **compared to some of the exhibits that we've seen; is that**  
 18 **right?**  
 19 A. Uh-huh.  
 20 **Q. Okay. And, again, what's your conclusion with regard to**  
 21 **what this represents, or how this represents the historic**  
 22 **character of the city?**  
 23 A. Sure. This demonstrates that there are properties  
 24 throughout the entire city that have been inventoried and  
 25 reviewed by a decision-maker and determined to be of the

Page 195

1 level that it meets the significance criteria for being  
 2 listed on the national register.  
 3 **Q. Okay. And there's been some testimony to suggest that, you**  
 4 **know, you should have used more data points --**  
 5 A. Uh-huh.  
 6 **Q. -- you know, perhaps you should have listed all of the data**  
 7 **in the city database of inventoried properties.**  
 8 A. Uh-huh.  
 9 **Q. Why not do that?**  
 10 A. I -- we -- myself and my director were very hesitant to do  
 11 that, because the information that's in the city database is  
 12 incomplete, so it would not adequately show the distribution  
 13 of properties throughout the city. And it -- it also  
 14 includes inventories that are likely out of date. And part  
 15 of that, then, is you having properties that have been  
 16 altered since they were inventoried, so they may have looked  
 17 like they had -- they might have met a threshold criteria  
 18 when they were inventoried but have been renovated since  
 19 they were inventoried.  
 20 And the database also contains properties that were  
 21 inventoried but the surveyor marked it as they didn't think  
 22 was eligible. So the inventory contains properties that  
 23 they think were eligible or properties that they think  
 24 weren't eligible, or properties that are no longer there.  
 25 **Q. Okay. And I note -- again, turning to 3.295 of the EIS, and**

Page 196

1 **I refer to it as 3.295, but I'm not sure that's the number.**  
 2 **It's the first page.**  
 3 A. Correct.  
 4 **Q. And you say -- or that your report says -- and I'm looking**  
 5 **at the first paragraph, second sentence, and it says,**  
 6 **"Although it is recognized that each neighborhood in the**  
 7 **study area has its own unique history and associated**  
 8 **historic resources, it is not possible to provide a detailed**  
 9 **history of each neighborhood within the citywide study area**  
 10 **in a programmatic EIS of this scale."**  
 11 **And so why not? Why not just go out and drive from North**  
 12 **Seattle all the way to Rainier Valley and inventory or**  
 13 **assess every property?**  
 14 A. That would be highly unusual for a programmatic EIS. I've  
 15 never seen that.  
 16 **Q. Okay. I'm going to ask you to open the notebook No. 6. So**  
 17 **if you can turn to No. 6, specifically what's been marked or**  
 18 **tabbed as City Exhibit No. 40, 4-0, in Notebook 6.**  
 19 A. 6. I have 5 --  
 20 **Q. You don't have 6? I thought we got you 6.**  
 21 A. I got it.  
 22 **Q. Oh, you got it?**  
 23 A. Which tab?  
 24 **Q. Tab 40.**  
 25 A. Okay.

Page 197

1 **Q. Okay. Let me know -- are you there?**  
 2 A. Yes.  
 3 **Q. Okay. Can you describe this document?**  
 4 A. Yes. So this is an export from the city's historical sites  
 5 database of inventoried properties. This is -- export is  
 6 all properties listed in their database that are under the  
 7 South Park neighborhood listing, and so there's multiple  
 8 columns. This link column is where it would link to the  
 9 full inventory form, address, historic name if they know it,  
 10 common name, parcel ID, which I -- yes, parcel ID, and then  
 11 errors. This is my notes when we looked at this data for  
 12 consistency.  
 13 MR. JOHNSON: Okay. And could we have this marked,  
 14 please, for identification.  
 15 HEARING EXAMINER: This would be 232.  
 16 (Exhibit No. 232 marked for identification)  
 17 MR. JOHNSON: So Exhibit 232. Thanks.  
 18 **Q. (By Mr. Johnson) And now I'd ask you to just turn over one**  
 19 **tab to Tab 41.**  
 20 A. Yes.  
 21 MR. JOHNSON: Could we have this marked as well, please?  
 22 HEARING EXAMINER: This will be 233.  
 23 (Exhibit No. 233 marked for identification)  
 24 **Q. (By Mr. Johnson) And can you describe what this exhibit is?**  
 25 A. Yes, this is an export from the same source but for the

Page 198

1 Westwood-Highland Park neighborhood.  
 2 **Q. Okay. And is this the same data?**  
 3 A. The same data.  
 4 **Q. Okay. And can you expand a little bit on what you meant in**  
 5 **both -- in both Exhibit 232 and 233 with regard to the error**  
 6 **column?**  
 7 A. Sure. So we did an attempt to map these. This was after  
 8 publication of the FEIS. And in doing -- in that effort,  
 9 when I was putting this information together for our GIS  
 10 staff, this is -- these are all the things I had to do to  
 11 normalize it. So much of the time the addresses were coded  
 12 wrong, so they were being extra -- like First Avenue South  
 13 "South" or that sort of a thing, or an incorrect parcel.  
 14 **Q. Okay. And comparing Exhibit 232 to 233, I mean, there are a**  
 15 **lot more -- a lot more listings in 232 than there are**  
 16 **in 233.**  
 17 A. Uh-huh.  
 18 **Q. Can you account for that?**  
 19 A. Yes. So it's because South Park had a historic-context  
 20 statement prepared and an inventory conducted. And  
 21 Westwood-Highland Park has not had a systematic inventory or  
 22 historic context prepared.  
 23 **Q. Okay. So is this an example of what you were referring to**  
 24 **earlier, about the inconsistency between neighborhoods**  
 25 **across the city?**

Page 199

1 A. Yes.  
 2 **Q. Okay. And this is just a comparison of two neighborhoods?**  
 3 A. Yes.  
 4 **Q. Did you choose these neighborhoods for any specific reason?**  
 5 A. No.  
 6 **Q. Okay. Just to illustrate --**  
 7 A. Just to illustrate. I wanted to show one that had a  
 8 historic context and one that didn't.  
 9 MR. JOHNSON: I would offer Exhibits 232 and 233 into the  
 10 record.  
 11 UNIDENTIFIED SPEAKER: No objection.  
 12 HEARING EXAMINER: 232 and 233 are admitted.  
 13 (Exhibit Nos. 232 and 233 admitted into evidence)  
 14 HEARING EXAMINER: We'll take a break and come back at a  
 15 quarter till.  
 16 (Recess)  
 17 HEARING EXAMINER: Continue, please.  
 18 **Q. (By Mr. Johnson) Could you turn to Tab 42 in the notebook,**  
 19 **please.**  
 20 A. Yes.  
 21 **Q. And I'm sorry if I'm repeating myself --**  
 22 HEARING EXAMINER: I'm sorry, what's the number?  
 23 MR. JOHNSON: 42, Seattle 42.  
 24 And could we have this marked?  
 25 HEARING EXAMINER: This will be 234.

Page 200

1 (Exhibit No. 234 marked or identification )  
 2 **Q. (By Mr. Johnson) So looking at what's now been marked for**  
 3 **identification as Exhibit 234, what's this document?**  
 4 A. Sure. This is a map that ESA prepared that is mapping the  
 5 previous two tables that we discussed, which I think are --  
 6 was it Exhibit 40 and 41?  
 7 **Q. Okay. 232 and 233 now, but go ahead.**  
 8 A. And so this shows the red dots are the properties that are  
 9 within the city's database that were listed in those tables.  
 10 It shows them in relationship to the boundaries of the urban  
 11 villages, so that's that dashed line, black and white line.  
 12 **Q. Okay. So does the fact that there are only two red dots in**  
 13 **the Westwood-Highland Park neighborhood versus a number of**  
 14 **red dots in the South Park neighborhood indicate there are**  
 15 **more historic resources in South Park than Westwood-Highland**  
 16 **Park?**  
 17 A. It's very misleading, because, as I said earlier, there has  
 18 been an historic property inventory, a historic-context  
 19 statement prepared for South Park, so there are -- there's  
 20 much more known about that area, so people have looked and  
 21 inventoried those properties. That hasn't happened in  
 22 Westwood-Highland Park, so just because there are two dots  
 23 doesn't mean that there are only two historic-aged  
 24 properties in that urban village.  
 25 And I would also point out that the boundaries of the

Page 201

1 urban villages are not the same as the boundaries that the  
 2 city uses in their database for neighborhoods, so you'll see  
 3 other dots outside of the urban village boundaries. So the  
 4 ones furthest west, there are four west of Westwood-Highland  
 5 Park urban village boundaries, those are coded in the city's  
 6 database as within that Westwood-Highland Park neighborhood,  
 7 but they are outside of the urban village.  
 8 HEARING EXAMINER: And just for clarification, is the  
 9 information in Exhibit 232, then, reflected in the South  
 10 Park area, and that which is in 233 reflected in the  
 11 Westwood-Highland Park area?  
 12 THE WITNESS: Yes.  
 13 **Q. (By Mr. Johnson) And just to be clear, these exhibits, that**  
 14 **is 232, 233 and 234, these are not contained in the EIS; is**  
 15 **that correct?**  
 16 A. That's correct.  
 17 **Q. Okay. And why did -- you prepared these; is that right?**  
 18 A. We prepared them as an exercise to demonstrate why we did  
 19 not use the city 's database, and I think this shows very  
 20 clearly that were we to have mapped these dots across the  
 21 city, there would be several issues. The first issue would  
 22 be, it would falsely represent the amount of historic  
 23 properties within the city because there are gaps of areas  
 24 that have not been examined.  
 25 So this, I think, makes the reader infer that there are

Page 202

1 only two historic-aged properties in Westwood-Highland Park,  
 2 which I know is not the case, and that South Park has --  
 3 would look to have more, but that's not true. So -- or I  
 4 don't know that that's true. So I think if we were to have  
 5 mapped this, it would have been very misleading.  
 6 And the other issue is that it -- the way that the  
 7 database, like I said, uses the boundaries of neighborhoods  
 8 is not the same as the way that the MHA EIS is defining the  
 9 urban villages.  
 10 There's a third reason, is that the dots are not equal.  
 11 So there may be an inventoried property behind each red dot,  
 12 but that inventoried property doesn't necessarily mean it's  
 13 significant, still there or worthy of listing.  
 14 MR. JOHNSON: Okay. I'd move to admit Exhibit 234 into  
 15 the record.  
 16 UNIDENTIFIED SPEAKER: No objection.  
 17 HEARING EXAMINER: 234 is admitted.  
 18 (Exhibit No. 234 admitted into evidence)  
 19 **Q. (By Mr. Johnson) So in regard to that last point, could you**  
 20 **open -- turn the page to Tab 43.**  
 21 A. Yes.  
 22 **Q. And I'm going to ask you a question about Tab 44 as well.**  
 23 MR. JOHNSON: Could we have both of those marked?  
 24 HEARING EXAMINER: It's been marked as 235 and 236  
 25 respectively.

Page 203

1 (Exhibit Nos. 235 and 236 marked for identification)  
 2 HEARING EXAMINER: 43 -- and they were your --  
 3 MR. JOHNSON: 43 and 44.  
 4 HEARING EXAMINER: -- and 44?  
 5 **Q. (By Mr. Johnson) So Tab 43, which is now marked for**  
 6 **identification as Exhibit 235, can you explain what this**  
 7 **document is?**  
 8 A. Yes. So this an example record that's within the city's  
 9 historic sites database. This is for a property that is in  
 10 the Westwood-Highland Park neighborhood. You can see these  
 11 are the standard fields that are used in their database, and  
 12 this is important, because if you look, there's a field that  
 13 says "Status," and the entry for that is "No Altered." That  
 14 means the surveyor looked at this property, created an  
 15 inventory record for it, but did not think that it met  
 16 eligibility criteria.  
 17 So -- and also I would note that the -- there's no  
 18 appearance description, there's no photo- -- well, there's  
 19 one photograph. The significance field is very brief, so  
 20 this is an example of the very low-level detail entries that  
 21 can be found in the database.  
 22 **Q. Okay. And so if there were a corresponding red dot on**  
 23 **Exhibit 234 of an inventoried property, that would be an**  
 24 **example of an inventoried property that was inventoried but**  
 25 **isn't necessarily ever going to be a landmark; is that**

Page 204

1 **right?**  
 2 A. Correct, correct.  
 3 **Q. Okay. And then could you look at Exhibit 236 for**  
 4 **identification, which is your 44.**  
 5 A. Yes.  
 6 **Q. And is this the same kind of -- same kind of document?**  
 7 A. It's the same form that's in their database but for a  
 8 different property. So this property's in Westwood-Highland  
 9 Park as well. This you can -- I think it's pretty clear you  
 10 can see there's a lot more information that was included in  
 11 this inventory. You know much more about the property. And  
 12 even when you look at that status field, the surveyor who  
 13 prepared this inventory form did think that this had  
 14 significance that might meet landmark criteria.  
 15 **Q. Okay. And, again, are these just examples?**  
 16 A. These are just examples. So it's to demonstrate that you  
 17 have properties -- that were you to map them all the same  
 18 would show that it would be misleading.  
 19 MR. JOHNSON: I'd move the admission of Exhibits 235  
 20 and 236.  
 21 UNIDENTIFIED SPEAKER: No objection.  
 22 HEARING EXAMINER: 235 and 236 are admitted.  
 23 (Exhibit Nos. 235 and 236 admitted into evidence)  
 24 A. Can I add one thing?  
 25 **Q. (By Mr. Johnson) Please.**

Page 205

1 HEARING EXAMINER: No, just with questions, please. I'm  
 2 still watching.  
 3 MR. JOHNSON: Even though it's almost four o'clock  
 4 (inaudible).  
 5 THE WITNESS: Sorry.  
 6 **Q. (By Mr. Johnson) Okay. Let's just continue on.**  
 7 A. Okay.  
 8 **Q. So in front of you there's some exhibits. Do you see the**  
 9 **looseleaf exhibits? And I'll be referring to -- for the**  
 10 **others here, these are actually admitted exhibits 20, 22**  
 11 **and 37. And were you here for Mr. Howard's testimony?**  
 12 A. Yes.  
 13 HEARING EXAMINER: 20, 22 and 37?  
 14 MR. JOHNSON: Correct.  
 15 **Q. (By Mr. Johnson) And I'm going to draw your attention first**  
 16 **to Exhibit 20.**  
 17 A. Okay.  
 18 **Q. Do you recall Mr. Howard's testimony about this exhibit?**  
 19 A. Yes.  
 20 **Q. Okay. And what's your understanding of what's reflected on**  
 21 **Exhibit 20?**  
 22 A. Hold on. It's very hard to read. It appears to be a map  
 23 showing the listed and surveyed historic properties  
 24 citywide, which is pulling from the city's historic database  
 25 as well as some things from DAHP's database, WISAARD.

Page 206

1 **Q. Okay. And when you say "pulled from the city's database,"**  
 2 **are inventoried properties, is there like a map like this,**  
 3 **where you can go and look and see all the inventoried map --**  
 4 **I'm sorry -- inventoried properties across the city?**  
 5 A. No, no. The city's database has not been geospatially  
 6 referenced, and it's very limited in how you can filter and  
 7 search, so you -- you can only filter by a handful of  
 8 categories.  
 9 **Q. Okay. So does this represent a good bit of work on**  
 10 **Mr. Howard's part?**  
 11 A. Yes.  
 12 **Q. Okay. And then just to draw your attention to Exhibit 37,**  
 13 **what is your understanding of what that reflects?**  
 14 A. It looks like he has tried to show MHA zoning changes  
 15 relative to listed and DOE properties, that would be  
 16 determined -- properties that have a determination of  
 17 eligibility.  
 18 **Q. Okay. And do you recall Mr. Howard's testimony -- first of**  
 19 **all, it's my understanding that there are some red dots on**  
 20 **Exhibit 37 that reflect National Register of Historic Places**  
 21 **data.**  
 22 A. Uh-huh.  
 23 **Q. Do you recall that?**  
 24 A. Yes.  
 25 **Q. And do you recall Mr. Howard's testimony about that data and**

Page 207

1 **his comparison of his NHRP [sic] data points to the ones**  
 2 **that are reflected in your --**  
 3 A. Right.  
 4 **Q. -- (inaudible) or your report?**  
 5 A. So we downloaded that data directly from WISAARD, from DAHP,  
 6 and I did not do that myself. Our GIS staff did that. As I  
 7 recall, he seemed to indicate that there were properties  
 8 mapped when he did it that weren't mapped when we did it,  
 9 and I can't account for why that would be.  
 10 **Q. Okay. And let's just back up so we understand what you're**  
 11 **talking about. Drawing your attention to Exhibit 37 in the**  
 12 **right-hand side, about mid-page --**  
 13 A. Uh-huh.  
 14 **Q. -- there's a high -- there's a boundary, and Mr. Howard was**  
 15 **talking about three dots that are found -- that he has found**  
 16 **that reflect NHRP properties that aren't reflected in**  
 17 **the EIS. Is that what you're talking about?**  
 18 A. Yeah, those look like the determined eligible properties in  
 19 this Mount Baker Park historic district.  
 20 **Q. Okay. And are those --**  
 21 HEARING EXAMINER: (Inaudible) -- I'm sorry, Exhibit 37  
 22 you said?  
 23 MR. JOHNSON: I'm sorry. Maybe I've confused them.  
 24 HEARING EXAMINER: I have a much smaller scale for 37.  
 25 MR. JOHNSON: I may have confused 20 and 22, I apologize.

Page 208

1 HEARING EXAMINER: 22 and 21 I think are --  
 2 MR. JOHNSON: Yeah, I'm referring to Exhibit 22, not 37.  
 3 HEARING EXAMINER: Okay. And, I'm sorry, you'll have to  
 4 walk me through, back to the dots you're looking at  
 5 (inaudible) discrepancy is --  
 6 MR. JOHNSON: Okay, I apologize. I'm trying to move this  
 7 along.  
 8 HEARING EXAMINER: I appreciate that.  
 9 **Q. (By Mr. Johnson) So we're now looking at Exhibit 22, and I**  
 10 **don't think I had that marked. Oh, yes, I did. Okay. So**  
 11 **we're all on the same page.**  
 12 **So I'm discussing the red dots that are included within**  
 13 **the hatched boundary -- red-hatched boundary, in the far**  
 14 **right hand of the page, Exhibit 22, mid-page. Are you**  
 15 **there?**  
 16 A. Uh-huh.  
 17 **Q. Okay. And, again, what I'm referring to is Mr. Howard's**  
 18 **testimony about those dots not being reflected on -- in**  
 19 **the EIS.**  
 20 A. Right.  
 21 **Q. And can you account for why that may or may not be the case?**  
 22 A. I cannot account for that. There are times when DAHP's data  
 23 is coded incorrectly, and I thought that might be the case.  
 24 And I went and I compared the ones that we had mapped to  
 25 those, and they were coded the same. So I'm not sure what

Page 209

1 happened with that.  
 2 I don't think it changes what we were trying to achieve in  
 3 our description of the affected environment; however, there  
 4 are still determined-eligible properties throughout the  
 5 city. And it is very unfortunate, I do not like to have  
 6 errors. I'm a very precise person, so I regret that that  
 7 happened, but it does not change our findings.  
 8 **Q. Okay. And are all -- are those three dots that are**  
 9 **reflecting NHRP properties, are those -- and I'm sorry that**  
 10 **I -- I should be saying "NRHP," are those within the study**  
 11 **area for MHA?**  
 12 A. Well, it's hard to tell because the -- the urban villages  
 13 are not on here. When I looked, it looked as though one of  
 14 them might be in an expansion area, but the other two, I  
 15 don't think so.  
 16 **Q. Okay. And can you take a look at Exhibit 37.**  
 17 A. This one?  
 18 **Q. Correct.**  
 19 A. Yes.  
 20 **Q. Okay. And were you here for Mr. Kasperzyk's testimony?**  
 21 A. Yes.  
 22 **Q. And what's your understanding of what this represents?**  
 23 A. So my understanding is this represents an effort to map  
 24 within Ballard the parcels by the year that the property was  
 25 built, I assume. I think they did an inventory as well.

Page 210

1 **Q. Okay. And do you recall his discussion of that inventory?**  
 2 A. Yes.  
 3 **Q. And so just taking all three of these exhibits together,**  
 4 **Exhibits 20, 22 and 37, did you consider preparing this**  
 5 **level of detailed analysis as part of the MHA EIS historic**  
 6 **resources section?**  
 7 A. No.  
 8 **Q. Why?**  
 9 A. I think with this exhibit, it's very misleading as well  
 10 because -- because a parcel has a property that was built --  
 11 a certain age based on -- I'm assuming the assessor's data  
 12 is where they derived that from -- does not mean that that  
 13 property retains its integrity, has -- has not been  
 14 remodeled, is still present. There's a lot of other  
 15 criteria that go into what makes a historic property  
 16 officially historic, you know, under different criteria. So  
 17 I think if you were to look at this, you -- you wouldn't  
 18 really understand what you're looking at. And the same with  
 19 these other ones. I think this also is very misleading,  
 20 because there are areas that are empty that does not mean  
 21 that there aren't historic-aged properties there.  
 22 **Q. Okay. And how about city landmarks themselves? We just**  
 23 **stripped this down to -- we exclude inventoried properties.**  
 24 **Is that available? Is there a geospatial reference in the**  
 25 **city -- from the city that reflects that data?**

Page 211

1 A. The city has a map that you can look at on their website.  
 2 We did look at that. I did look at that. MHA wouldn't  
 3 impact those properties, however, because all landmarks are  
 4 protected by a certificate-of-approval process from the  
 5 Landmarks Board. So if any project would be happening  
 6 adjacent to or at a landmark, that would be reviewed under  
 7 existing regulations.  
 8 **Q. Okay. And can you draw -- just drawing your attention back**  
 9 **to the EIS page 3.302, Exhibit 3.5-4.**  
 10 A. Yes.  
 11 HEARING EXAMINER: Give me that again.  
 12 MR. JOHNSON: It's page 3.302 of the EIS.  
 13 A. Yes.  
 14 **Q. (By Mr. Johnson) And so there's one column there, and it**  
 15 **says, "Properties Listed in City Historic Resources Survey**  
 16 **Database"?**  
 17 A. Correct.  
 18 **Q. Okay. And why is the "City" underlined?**  
 19 A. We just wanted to clarify the -- where that information was  
 20 coming from.  
 21 **Q. Okay. And what's the point of having a -- you know, a**  
 22 **column with all these Xs there? I mean, what's the point of**  
 23 **that?**  
 24 A. We wanted to -- we did want to show that there are  
 25 properties in the city that have been inventoried, but we

Page 212

1 wanted to compare that to areas that have had no systematic  
 2 inventory. So this shows, yes, there is a property in their  
 3 database for almost all of these urban villages, but that's  
 4 not the same as having a systematic inventory conducted, so  
 5 it -- and saying there is not a historic-context statement  
 6 for all of these. So I think this shows that there are  
 7 areas that are less understood than other areas in the study  
 8 area.  
 9 **Q. Okay. And are these factors that resulted in your decision**  
 10 **to include only the NHRP determined-eligible properties**  
 11 **on -- in figures 3.5-2 and 3.5-3?**  
 12 A. Yes, we wanted to use the NRHP determined-eligible  
 13 properties because they are citywide, they're an equal data  
 14 set.  
 15 **Q. Okay. Moving through the Historic Resources report, on the**  
 16 **bottom of page 3.296 -- I'm sorry, the bottom of 3.306.**  
 17 A. Yes.  
 18 **Q. There's a discussion on this page about the existence of**  
 19 **historic resources associated with marginalized or**  
 20 **underrepresented immigrant communities.**  
 21 A. Uh-huh.  
 22 **Q. What's the point of that discussion?**  
 23 A. We wanted to include this because -- well, it does say here  
 24 there is a potential for these communities to have a lower  
 25 participation in the SEPA process, but this really comes

Page 221

1 **Why did you think it was important to point that out?**  
 2 A. Because this shows that there, again, is a process for these  
 3 scenarios, that while changes could happen under this  
 4 program, these would still -- this review process would  
 5 still occur.  
 6 **Q. Okay. Let's turn to page 3.308. And I'd just -- I'd like**  
 7 **you to consider Exhibit 3.5-5. And then on the next page**  
 8 **there's another exhibit for Alternative 3, it's 3.5-6. And**  
 9 **then if you turn over to the next page, there's a similar**  
 10 **exhibit for the preferred alternative that's Exhibit 3.5-7.**  
 11 A. Yes.  
 12 **Q. And those are all -- they all reflect similar data points;**  
 13 **is that right?**  
 14 A. That's right.  
 15 **Q. Okay. So can you just explain briefly what this con- --**  
 16 **what these convey?**  
 17 A. Yes. We were trying to compare the different alternatives  
 18 with respect to the estimated housing growth by percent, and  
 19 then compare that, then, to -- if that urban village has had  
 20 a systematic inventory conducted or not, so with the intent  
 21 to convey areas that may be less understood than others. So  
 22 if there is no systematic inventory conducted but, you know,  
 23 estimated housing growth in that area is at a certain  
 24 percent, that there could be an indicator of less-informed  
 25 review of that area.

Page 222

1 **Q. Okay. And that's true across each of the alternatives you**  
 2 **evaluated?**  
 3 A. Yes.  
 4 **Q. All right. And can you now turn to page 3.311.**  
 5 A. Yes.  
 6 **Q. And there is a list of mitigation measures.**  
 7 A. Yes.  
 8 **Q. Do you recall those?**  
 9 A. Yes.  
 10 **Q. How are those developed?**  
 11 A. Sure. I developed those in consultation with the city,  
 12 and -- and that would be our project manager, Geoffrey  
 13 Wentland, and Sarah Sodt also reviewed these and provided  
 14 input.  
 15 **Q. Okay. And were these revised from the time of the**  
 16 **publication of the DEIS until the time of the FEIS?**  
 17 A. Yes.  
 18 **Q. Okay. And did you consult with Ms. Sodt about these after**  
 19 **publication of the DEIS or before?**  
 20 A. After.  
 21 **Q. Okay. And were you the one who made the determination that**  
 22 **the best way to show -- I guess, show these mitigation**  
 23 **measures was using a bullet kind of format?**  
 24 A. That's stylistic. I've seen that before. It's not  
 25 uncommon.

Page 223

1 **Q. Okay. And in your professional opinion, is this consistent**  
 2 **with how mitigation measures would be discussed in an EIS?**  
 3 A. Yeah. And I think I did -- I forgot to say earlier, I  
 4 didn't -- I didn't choose to do it in a bullet. That was  
 5 the template that we were given. But, yes, it's normal.  
 6 **Q. Okay. And then finally, on the last page -- no, I'm**  
 7 **sorry -- yes, it's the last page of page 3.313, there's a**  
 8 **Section 2.5.4, "Significant Unavoidable Adverse Impacts."**  
 9 **Do you see that?**  
 10 A. Yes.  
 11 **Q. Okay. So were you the one who concluded that there would be**  
 12 **no significant unavoidable direct impacts to historic and**  
 13 **cultural resources under any of the proposed alternatives?**  
 14 A. Yes.  
 15 **Q. Okay. Did you do that in consultation with your team at**  
 16 **ESA?**  
 17 A. Yes.  
 18 **Q. Okay. And what was the point of the under- -- if you go**  
 19 **near the bottom it says, "No significant unavoidable," and**  
 20 **then "direct" is underlined. Why is "direct" underlined?**  
 21 A. Because there is no direct impact happening to a specific  
 22 property under this program. The impacts would be indirect.  
 23 A direct impact would be something that is physically  
 24 changing a building structure or object for historic  
 25 resources.

Page 224

1 **Q. Okay. But there -- I mean, presumably, you've said there**  
 2 **would be impacts here, so --**  
 3 A. Yes.  
 4 **Q. -- so can you just -- let's ferret that out a little bit.**  
 5 **What's the difference in your mind between "direct" and**  
 6 **"indirect"?**  
 7 A. So "indirect" would be a changing to a setting or an overall  
 8 change to the historic fabric of a neighborhood. But a  
 9 "direct" would be something that is -- it's a physical  
 10 versus a nonphysical change.  
 11 **Q. And in your opinion, is the Section 3.5, the Historic**  
 12 **Resources section of the MHA EIS, reflective of the**  
 13 **standards you would expect to see in such a document?**  
 14 A. Yes.  
 15 MR. JOHNSON: Thank you. Nothing further.  
 16 HEARING EXAMINER: Cross?  
 17 MR. BRICKLIN: Thank you.  
 18  
 19 **CROSS-EXAMINATION**  
 20 **BY MR. BRICKLIN:**  
 21 **Q. My name's Dave Bricklin. I'm representing the Seattle**  
 22 **Coalition for Affordability, Livability and Equity.**  
 23 A. Uh-huh.  
 24 **Q. I have a number of questions for you here.**  
 25 **First of all, just a little bit about your background. I**



Page 225

1 saw that you worked on the Cheespi (phonetic) Trail project;  
 2 is that right?  
 3 A. Yes.  
 4 Q. And your -- and was that -- it indicates you did the  
 5 environmental checklist on that; is that right?  
 6 A. I did the historic section of that.  
 7 Q. Of that. All right.  
 8 So let me ask you about how you got started in this  
 9 project. And you said your supervisor is who?  
 10 A. Paula Johnson.  
 11 Q. And who's her supervisor?  
 12 A. Her supervisor is Margaret Clancy.  
 13 Q. And who is her supervisor?  
 14 A. Uh --  
 15 Q. Up the ladder?  
 16 A. I don't know.  
 17 Q. Where does Mark Johnson fit in?  
 18 A. Mark Johnson is Sharese's director.  
 19 Q. All right. So how many layers up the totem pole is he from  
 20 where you are?  
 21 A. In what way do you mean?  
 22 Q. In a hierarchy? In terms of the organization? I mean, is  
 23 he -- what's his relationship in the organization to you?  
 24 A. He is above me.  
 25 Q. A couple tiers up?

Page 226

1 A. Um, at least one.  
 2 Q. All right. So -- I mean, two, right? Because you said --  
 3 don't you report to Sharese, or she's a tier above you or  
 4 not?  
 5 A. I do not report to Sharese.  
 6 Q. Is she a tier above you, though?  
 7 A. Technically, yes, I think so.  
 8 Q. And then Mark's above her?  
 9 A. Uh-huh.  
 10 Q. I just -- and then how did you come to learn of this  
 11 project?  
 12 A. I came to learn of it when Sharese came to me with the scope  
 13 of work and the schedule.  
 14 Q. All right.  
 15 A. And I believe that was in March.  
 16 Q. And March of --  
 17 A. 2017.  
 18 Q. -- 2017.  
 19 Do you recall getting an email from Mark Johnson earlier  
 20 than that alerting you about this project headed your way?  
 21 A. I believe in the proposal phase, yes, and there might have  
 22 been an update at some point.  
 23 MR. BRICKLIN: Can we have this marked -- I'm sorry --  
 24 could we have this marked with a number?  
 25 HEARING EXAMINER: This will be 237.

Page 227

1 (Exhibit No. 237 marked for identification)  
 2 Q. (By Mr. Bricklin) I'm handing you what's been marked for  
 3 identification as Exhibit 237. Do you recognize this as a  
 4 reprint of an interoffice email at ESA?  
 5 A. Yes.  
 6 Q. From Mark to you and others dated September 19, 2016, right?  
 7 A. Yeah.  
 8 Q. And do you see there, he says, "Friends and Colleagues,  
 9 below is a message about an EIS. We are (inaudible) with  
 10 three-square blocks on. 'MHA' stands for Mandatory Housing  
 11 Affordability and so forth." Do you see that?  
 12 A. Uh-huh.  
 13 Q. And he says, "The City of Seattle is proposing some citywide  
 14 changes that would allow more density, but tie the increase  
 15 to creating affordable housing. We have a small budget to  
 16 do a high-level analysis for historic resources, open space  
 17 and recreation and public services and utilities." Do you  
 18 see that?  
 19 A. Uh-huh.  
 20 Q. Do you know what the budget was for that?  
 21 A. I do not.  
 22 Q. Turn to page 2, please. See the blue print in the middle of  
 23 the page? And does that finish with, "Getting a DEIS in 1 Q  
 24 '17," first quarter of 2017, "should be pretty easy to fit  
 25 in since the budget is small. We have about 30,000 for the

Page 228

1 whole of our work." Do you see that?  
 2 A. I do.  
 3 Q. And that would be not just for the historic resources, but  
 4 for the open space and recreation, public services and  
 5 utilities, right?  
 6 A. I would assume so.  
 7 Q. All right. Take a look earlier in that paragraph, at the  
 8 beginning of that blue type from Mark. "The city's initial  
 9 take -- the city's initial take on these topics were that  
 10 they would not result in significant impacts." What's --  
 11 would you remind me what the date of this memo is?  
 12 A. This would be September 19, 2016.  
 13 Q. So this is a year or more before the Draft EIS is published;  
 14 is that right?  
 15 A. Yes.  
 16 Q. And the city's indicating to your company that they've --  
 17 that they have determined that the project will not result  
 18 in significant impacts. Do you see that?  
 19 A. I see the sentence.  
 20 Q. And what -- and how does that sentence finish?  
 21 A. (No reply).  
 22 Q. Does it say, "But they" -- meaning the city -- "they feel  
 23 the need to justify that assumption"?  
 24 A. I didn't write this.  
 25 Q. I know, but is that what the sentence says?

1 A. That is what it says.  
 2 **Q. And this is the email that you received about this project,**  
 3 **right?**  
 4 A. Yes, I was cc'd on this.  
 5 **Q. Did you -- before the Draft EIS made it to being a public**  
 6 **document, there were internal drafts, right?**  
 7 A. Yes.  
 8 **Q. And were they -- you drafted the internal drafts and**  
 9 **circulated them within your -- within ESA for comments by**  
 10 **others?**  
 11 A. That is standard, yes.  
 12 **Q. I'm handing you what's --**  
 13 **MR. BRICKLIN: May I have this marked as an exhibit,**  
 14 **please?**  
 15 **HEARING EXAMINER: This is 238,**  
 16 **(Exhibit No. 238 marked for identification)**  
 17 **Q. (By Mr. Bricklin) I'm handing you what's been marked as an**  
 18 **exhibit, as 238. Do you recognize this as a draft?**  
 19 **Apparently, according to the yellow highlighting on the**  
 20 **first page, May 5, 2017.**  
 21 A. Yes.  
 22 **Q. Do you see that?**  
 23 A. I see that date, yes.  
 24 **Q. All right. The initials "R.W." in the comment boxes here,**  
 25 **that would be Richard Weinman; is that right?**

1 A. Yes.  
 2 **Q. Do you see that he says a little further down, "I don't**  
 3 **think you can say definitively that such impacts are**  
 4 **significant, however, since they are indirect and**  
 5 **unconcerned"; is that right?**  
 6 A. Uh-huh.  
 7 **Q. And then he goes on to say, "And this metric implies that**  
 8 **the other impacts discussed in this section are**  
 9 **categorically not significant which is dubious"?**  
 10 A. Yes.  
 11 **Q. Did you have a follow-up discussion with Mr. Weinman about**  
 12 **his comment that characterizing the other impacts as**  
 13 **"insignificant" was dubious?**  
 14 A. Not directly, no.  
 15 **Q. Do you see that he continued, "This is a gross and**  
 16 **indefinite indicator, in any event, and probably more**  
 17 **suitable for unknown, unsurveyed buildings." Do you see**  
 18 **that?**  
 19 A. Uh-huh.  
 20 **Q. He says, "The locations of surveyed historic buildings, on**  
 21 **the other hand, are known and could be compared to the**  
 22 **parcels being rezoned," right?**  
 23 A. Uh-huh.  
 24 **Q. And that's what you did not do, right?**  
 25 A. We did not look at the parcel level.

1 A. I believe so, yes.  
 2 **Q. And who is he?**  
 3 A. He does not work at ESA. I believe he was with the city or  
 4 a consultant to the city.  
 5 **Q. All right. So this was reviewed by people outside ESA as**  
 6 **well?**  
 7 A. That's standard, yeah.  
 8 **Q. All right. Okay. Could you turn to page -- the page that**  
 9 **has the Bates number of 34827. It's the page that has the**  
 10 **title in the middle of page 3.5.2, "Impacts."**  
 11 A. Yes.  
 12 **Q. Do you see that?**  
 13 A. (No audible reply).  
 14 **Q. And do you see that the comment box that has "R.W.3" in it**  
 15 **highlights text associated with that comment, right?**  
 16 A. Uh-huh.  
 17 **Q. And the text that is highlighted is, "Significant impacts**  
 18 **will be defined as potential growth rates of 50 percent or**  
 19 **greater than," and that sentence goes on, "than the**  
 20 **potential growth rates under the new action alternative,"**  
 21 **right?**  
 22 A. Right.  
 23 **Q. Do you see that his comment is that the -- that, "This**  
 24 **metric implies that other" -- excuse me, "I think this**  
 25 **metric is useful but incomplete." Do you see that?**

1 **Q. Do you know that the zoning that's being proposed is done at**  
 2 **the parcel level?**  
 3 A. I would assume so.  
 4 **Q. I mean, this isn't just a programmatic EIS in a broad**  
 5 **planning sense of saying, "Let's consider focusing growth in**  
 6 **urban villages and we'll figure out the details of that**  
 7 **later." It's not a high-level planning document in that**  
 8 **sense, is it?**  
 9 A. For historic resources, it is.  
 10 **Q. No, but I'm talking about the action that's being proposed.**  
 11 **The action is not adopting comprehensive plan policies that**  
 12 **aren't specific to any particular parcel. The action is --**  
 13 **is zone- -- rezoning of individual parcels in the city,**  
 14 **right?**  
 15 A. Uh-huh.  
 16 **Q. He goes on to say that, "Rezoning would seem to be a**  
 17 **stronger indicator of likelihood of demo or redevelopment,**  
 18 **and a better of measure of significant impact." Do you see**  
 19 **that?**  
 20 A. Uh-huh.  
 21 **Q. Let's talk about --**  
 22 **MR. BRICKLIN: I'd move the admission of these last two**  
 23 **exhibits, 238 --**  
 24 **HEARING EXAMINER: 237 and 238, any objection?**  
 25 **UNIDENTIFIED SPEAKER: No objection.**

**VOLUME 11**

**AUGUST 20, 2018**

## Hearing - Day 11

**In the Matter of the Appeal of: Wallingford Community  
Council, et al.**

**August 20, 2018**



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of: )  
WALLINGFORD COMMUNITY COUNCIL, ET AL., )  
) W-17-006  
) through  
of the adequacy of the FEIS issued by the ) W-17-014  
Director, office of Planning and )  
7 Community Development, )

Hearing, Day 11 - August 20, 2018

Heard before Hearing Examiner Ryan Vancil

Transcribed by: Bonnie Reed, CET  
Court-Certified Transcription

A P P E A R A N C E S

On Behalf of Respondent City of Seattle:  
TADAS KISIELIUS  
JEFF WEBER  
Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, Washington 98104-7097

A P P E A R A N C E S

On Behalf of Appellant Fremont Neighborhood Council:  
TOBY THALER  
Attorney at Law  
Post Office Box 1188  
Seattle, Washington 98111-1188

On Behalf of Appellant North Rainier Neighborhood Plan:  
TALIS ABOLINS  
437 29th St NE Suite F  
Puyallup, Washington 98372

On Behalf of Appellant Seattle Coalition for  
Affordability, Livability & Equity:  
CLAUDIA NEWMAN  
Bricklin & Newman, LLP  
1424 Fourth Avenue, Suite 500  
Seattle, Washington 98101-2258

EXAMINATION INDEX

WITNESS:	PAGE:
MICHAEL JONES	
Direct Examination by Mr. Abolins	9
Cross-Examination by Mr. Kisielius	42
Redirect Examination by Mr. Abolins	45
CHRISTINE TOBIN-PRESSER	
Direct Examination by Ms. Newman	49
Cross-Examination by Mr. Kisielius	153
CRAIG CUNDIFF	
Direct Examination by Mr. Abolins	165
DAVID MOEHRING	
Direct Examination by Ms. Newman	177
Cross-Examination by Mr. Kisielius	213
Redirect Examination by Ms. Newman	217
WILLIAM BRADBURD	
Direct Examination by Ms. Newman	222

EXHIBIT INDEX

NO.	DESCRIPTION	MARKED	RECEIVED
239	Declaration of Gordon Lagerquist		6
240	EIS Appendix X	51	73
241	SCALE Exhibit 192	52	73
242	SCALE Exhibit 193-196	118	145
243	SCALE Exhibit 40	133	145
244	City Exhibit 30	143	145
245	SCALE Exhibit 203	178	222
246	Exhibit H-10	224	

available after he returns from the Northeast United States at the end of the week, or August 30, 31.

MR. KISIELIUS: Mr. Examiner, Tadas Kisielius on behalf of the City.

Our understanding is Mr. Lagerquist is not being offered as an expert witness; rather, it's fact testimony.

MR. THALER: Correct.

MR. KISIELIUS: With that in mind, we have reviewed the declaration, and we don't need to cross examine Mr. Lagerquist.

HEARING EXAMINER: Okay.

MR. THALER: Thank you.

HEARING EXAMINER: Anything else we need to address procedurally?

MR. THALER: The City attorneys wanted to -- apparently in the paper shuffle, Exhibit 217 did not get in their hands. And I just reviewed what that exhibit is with co-counsel, and I will be able to provide a copy of that tomorrow.

UNIDENTIFIED MALE: Thank you.

MS. NEWMAN: Thank you.

HEARING EXAMINER: Okay. Anything else?

MR. THALER: Not from me.

HEARING EXAMINER: All right. Just a short note for the parties. I'm happy to make the Hearing Examiner room available for you to collect your materials here, but we've

-o0o-

August 20, 2018

HEARING EXAMINER: Return for Monday, August 20th, for W-17-006 through 014, continuing with the Appellants' case.

Are there procedural items that we need to address before we get started?

MR. THALER: We had arranged to have Gordon Lagerquist -- Toby Thaler, Fremont Neighborhood Council. We had arranged for Gordon Lagerquist to testify by means of a declaration, and the deadline that we had agreed on is August 9th, and it was hopefully received by counsel for the City before 5:00 on August 9th. And I have a copy here for the Hearing Examiner.

HEARING EXAMINER: Okay.

MR. THALER: And I'm not sure how you want to proceed in terms of designating it as an exhibit or how that --

HEARING EXAMINER: We'll just mark it as an exhibit, along with the others. We are on 239.

Any objections?

MR. KISIELIUS: None.

HEARING EXAMINER: All right. Exhibit 239 is admitted.

(Exhibit No. 239 admitted)

MR. THALER: And then there's the logistics -- if the City wishes to cross examine Mr. Lagerquist, he would be

had a few people trying to come into the Hearing Examiner staff only area to gather my cart to put things on it, so just make sure whoever is coming knows that this is the record.

And I don't necessarily want documents up here unless you have handed them to me during the hearing. So just make a note.

It's been individuals on both sides, so it's not a big deal, but I just want to -- if we could highlight that for them, that would be helpful.

And with that, we will get started with the appellants.

MR. ABOLINS: Good morning, Your Honor.

HEARING EXAMINER: Morning.

MR. ABOLINS: The Friends of North Rainier call Michael James.

HEARING EXAMINER: Please state your name, and spell it for the record.

MR. JAMES: Yes. My name is Michael James, M-I-C-H-A-E-L, J-A-M-E-S.

HEARING EXAMINER: And do you swear or affirm that the testimony you will provide in today's hearing will be the truth?

MR. JAMES: Yes, I do.

HEARING EXAMINER: Thank you.

TOBIN-PRESSER, Christine

1 to Hudson Street, there's actually Mount St. Vincent  
 2 Retirement Home is up there, and I think it's where it says  
 3 LR3 in that lighter beige area in the -- that square that's  
 4 not crosshatched.  
 5 **Q. Okay. And again, that's a steep slope area?**  
 6 A. Yeah. The -- I might be incorrect that that brown part is  
 7 the retirement home. It might be on the next block.  
 8 Because that's actually more at the top of the hill. The --  
 9 the retirement home isn't actually sitting on that --  
 10 **Q. So it's --**  
 11 A. -- sloped.  
 12 **Q. -- generally in that area?**  
 13 A. Yes.  
 14 MS. NEWMAN: Okay. So, Mr. Examiner, I would like to  
 15 offer Exhibit 240 and 241 (inaudible).  
 16 HEARING EXAMINER: Any objections?  
 17 MR. KISIELIUS: None.  
 18 HEARING EXAMINER: 240 and 241 are admitted.  
 19 (Exhibits No. 240 and 241 admitted)  
 20 **Q. (By Ms. Newman) And did you have anything else to say about**  
 21 **these two in the --**  
 22 A. No, not right now.  
 23 **Q. -- general narrative? Okay.**  
 24 A. I might later.  
 25 **Q. That's -- keep them handy. So let's talk about the EIS then**

1 **Q. Okay.**  
 2 A. And also -- I mean, and there are great views of Mount  
 3 Rainier as well.  
 4 **Q. Okay. All right. Let's look at the EIS then. We're going**  
 5 **to pull that out, and we'll go page -- page through that a**  
 6 **little bit.**  
 7 A. Is that --  
 8 **Q. And also --**  
 9 A. Is that Exhibit 2?  
 10 **Q. So Exhibit 2 is that huge notebook right there in front of**  
 11 **you. Yes, it's Exhibit 2. And we're going to focus on the**  
 12 **land use chapters and the aesthetics chapters, but I'll**  
 13 **point everyone to page numbers as we go.**  
 14 **Did you review the MHA EIS?**  
 15 A. Well, I definitely did. I didn't read it cover to cover,  
 16 but I did read all of specific sections and parts of other  
 17 sections.  
 18 **Q. All right. And so we have Chapter 3.3, the EIS discloses**  
 19 **and analyzes aesthetic impacts, which starts on page 3.160.**  
 20 A. Okay.  
 21 **Q. If you want to open up to that.**  
 22 A. I'm there. I think it's 3.159 that it --  
 23 **Q. Oh, right.**  
 24 A. First page.  
 25 **Q. You're right. And you -- did you review this chapter?**

1 for the MHA proposal.  
 2 **Oh, actually, before I do that, I want to talk a little**  
 3 **bit more about the existing conditions there.**  
 4 **Is this a residential urban village, or a hub urban**  
 5 **village? What type of urban village is the West Seattle**  
 6 **Junction?**  
 7 A. It's what's called a hub urban village, because the vision  
 8 for it was that it would be a place where there would  
 9 actually be jobs beyond retail, and restaurant, and things  
 10 like that, that it would actually be a job destination.  
 11 **Q. Okay.**  
 12 A. Unfortunately, that hasn't been the case. So it has a lot  
 13 of characteristics of what you would think of as a  
 14 residential.  
 15 **Q. Okay. And are there views -- can you just give me a general**  
 16 **big picture of whether or not there are different views of**  
 17 **different important -- you know, like downtown, or Mount**  
 18 **Rainier and that sort of thing in this area?**  
 19 A. Yes. There are very beautiful views. Because you know how  
 20 they say Seattle is built on seven hills; one of them is  
 21 what's High Point in West Seattle.  
 22 And so as you're going along 35th, and -- and really all  
 23 of it, you're heading up as you're going north to south.  
 24 And so there are amazing views of the city facing east.  
 25 There are amazing views of Puget Sound up to the west.

1 A. I did. I'm part of the Junction Neighborhood Organization,  
 2 and we submitted a comment to the draft EIS, and I was  
 3 responsible for analysis of this chapter. So I did read  
 4 both the draft and the final.  
 5 **Q. All right. And does the EIS include a discussion of the**  
 6 **character development patterns, the land use, and all of**  
 7 **those details that you just testified about about West**  
 8 **Seattle anywhere in that chapter?**  
 9 A. No. Nowhere in the chapter.  
 10 **Q. Anywhere in the whole EIS that you're aware of?**  
 11 A. No, it does not. I am aware that it does not.  
 12 **Q. All right. And then looking at 3.3, do you see on that**  
 13 **page -- that first page of the chapter there's a section**  
 14 **called 3.3.1 called Affected Environment?**  
 15 A. Yes. That's where I had thought that there would be a  
 16 description of the current condition -- aesthetic condition  
 17 of West Seattle since it's being significantly affected.  
 18 But there's nothing there.  
 19 **Q. So what does it talk about?**  
 20 A. It basically talks about -- generally about floor area ratio  
 21 and building heights throughout the city. And then there's  
 22 a map of allowed heights over the whole city, which --  
 23 **Q. And so I want to make a distinction. So the map is about**  
 24 **allowed -- what the regulations allow, or is it about the**  
 25 **actual heights of buildings?**



Page 77

1 A. Allowed.

2 **Q. What are allowed?**

3 A. Yes. That's on page 3.161.

4 **Q. And is there anything in the EIS that describes -- wait.**

5 **I'm sorry. What about -- let's look at page 3.163.**

6 A. Okay.

7 **Q. There's three pictures on there, and they show an image**

8 **of -- this is under the heading Affected Environment. And**

9 **so what do you -- how do you interpret that? And tell me if**

10 **that adequately addresses and describes West Seattle, what**

11 **you were testifying earlier.**

12 A. Okay. So what this purports to describe is establish single

13 family housing areas, new infill single family housing and

14 lowrise multifamily infill housing areas.

15 And certainly with respect to the West Seattle Junction,

16 and I imagine other areas as well, it's extremely

17 misleading, and it certainly doesn't describe the existing

18 area. And --

19 **Q. It doesn't describe west -- like the actual neighborhood?**

20 A. No.

21 **Q. It's just a generic?**

22 A. No. And it's actually misleading.

23 **Q. How is it misleading?**

24 A. Well, if you look at the picture that's supposed to be

25 established single family housing areas, as you can see,

Page 78

1 it's actually a picture of a sidewalk. There's some houses

2 to the left-hand side of the picture. They're not -- you

3 can't even see what they look like.

4 The second picture is -- is purporting to show what new

5 single -- infill single family housing looks like in the

6 areas to be affected. And it's that boxy, geometric style

7 that's sort of hulking.

8 And certainly in the West Seattle Junction Urban Village

9 that is not predominantly the case. And I would just, as I

10 said, I would probably be going back to a couple of the

11 pictures.

12 But if you look at Exhibit 241, picture number 10, that's

13 an example of new infill construction within the West

14 Seattle Urban Village, and it looks nothing like that

15 picture.

16 If you look down at the third picture, which is lowrise

17 multifamily infill housing, it is in exactly the same style

18 as the above picture of new infill single family housing,

19 and it's taken from much farther away.

20 So it gives the impression that it's very similar in scale

21 to the new infill single family housing. So the implication

22 of this page is, you know, first that existing character of

23 the single family housing areas isn't even important enough

24 to show a real picture of.

25 Second, that new -- new housing looks like this boxy,

Page 79

1 geometric structure; and then third, and the new multifamily

2 construction will look the same; and therefore, you know,

3 who really cares? There's not really going to be an impact.

4 It's all going to look like what's already coming in anyway.

5 And that is not the case in the West Seattle Junction.

6 **Q. Okay. And on this new single family housing, how do you**

7 **know that it's not the case that West Seattle Junction is**

8 **transforming into what they're showing -- or that that's the**

9 **existing -- that reflects the current existing environment**

10 **or architecture in West Seattle Junction right now?**

11 A. Well, as I mentioned, I was the person in JuNO that was

12 responsible for kind of looking at this section, so I

13 already knew sort of generally that that wasn't the case.

14 But when I read the EIS, I went to Zillow and looked up

15 every single family parcel in the West Seattle Junction

16 Urban Village, and made a note of when it was built. And

17 everything that was built within the last 25 years I drove

18 by and looked at to determine whether or not it actually

19 looked like this new infill single family housing depicted

20 here. And very little did.

21 **Q. Okay. And did you provide that data as part of JuNO's**

22 **response to the EIS?**

23 A. I did. It's in -- it's actually in the published final

24 environmental impact statement in the comments section.

25 It's under -- it's under -- for some reason, even though

Page 80

1 JuNO submitted the comment, it's under -- I think it's under

2 Presser. But --

3 **Q. Okay.**

4 A. Maybe Tobin-Presser.

5 **Q. Okay. So it's under your name?**

6 A. Yes.

7 **Q. Not --**

8 A. I'm not sure why.

9 **Q. Not the organization?**

10 A. Right.

11 **Q. All right.**

12 A. The entire JuNO comment, for some reason, is under my name.

13 MS. NEWMAN: If I could, I have another exhibit I'd like

14 to have marked. I don't know if this will be all one

15 exhibit, or four separate. I think one would be our

16 preference.

17 And I can give you all a copy. This is a SCALE exhibit.

18 And I don't know the number of the SCALE exhibit, but I can

19 look it up.

20 HEARING EXAMINER: That would be helpful.

21 MS. NEWMAN: All right.

22 HEARING EXAMINER: So these are?

23 MS. NEWMAN: These are SCALE Exhibits 193 through 196, and

24 I have -- will offer them either as four separate or one

25 single, deferring to the Examiner on how you would prefer.

1 **Q. But four were built in the Fairmount Springs area?**  
 2 A. Yes. But that is -- I would just take a note that that is  
 3 the largest of the four areas. It has the most houses.  
 4 **Q. Okay. Oh, there's 124 homes in Fairmount Park that are**  
 5 **between 1906 and 1927?**  
 6 A. Yes. That's by far the largest concentration of houses, as  
 7 you can see.  
 8 **Q. Okay. Is there anything else you'd like to describe or tell**  
 9 **us about this?**  
 10 A. No. Not right now.  
 11 MS. NEWMAN: All right. Mr. Examiner, I move to admit  
 12 exhibit -- yeah. We did mark it. I move to admit 242.  
 13 HEARING EXAMINER: Any objection?  
 14 MR. KISIELIUS: None.  
 15 HEARING EXAMINER: 242 is admitted.  
 16 (Exhibit No. 242 admitted)  
 17 MR. KISIELIUS: I'm sorry. That was 242?  
 18 HEARING EXAMINER: Uh-huh.  
 19 MR. KISIELIUS: Thank you.  
 20 **Q. (By Ms. Newman) Did the EIS show the aesthetic impacts of**  
 21 **changing single family zoning in the West Seattle Junction**  
 22 **Urban Village to RSL, or to LR1, or to LR2, from single**  
 23 **family to those three different zones?**  
 24 A. Within the West Seattle Junction, definitely not. And sort  
 25 of generically otherwise. But on page 3.169, under impacts.

1 **Q. You said that there's a nursery home there, and there's a**  
 2 **slope there. And so you're saying the EIS doesn't look at**  
 3 **the impact of upzoning adjacent to around the nursing home**  
 4 **and the slope impacts, that sort of thing?**  
 5 A. No.  
 6 **Q. Like that's an example of what is not considered in the EIS?**  
 7 A. Correct.  
 8 **Q. All right. So let's look at page 3.179. What is --**  
 9 **there's -- it looks like some graphics from 3.178, several**  
 10 **pages. Have you reviewed these?**  
 11 A. I have.  
 12 **Q. And tell me what -- what you understand those to be.**  
 13 A. So on 3.179, my understanding that this is purporting to  
 14 show what it would look like when existing single family,  
 15 which is the white house -- houses when -- if residential  
 16 small lot zoning is implemented, and the yellow would be  
 17 residential small lot, so what that would look like.  
 18 **Q. And is that a street in West Seattle?**  
 19 A. No.  
 20 **Q. Okay. Do you recognize -- do you know where that street is?**  
 21 A. No. I think it's just a generic --  
 22 **Q. All right.**  
 23 A. -- street.  
 24 **Q. What's your reaction to whether this is an adequate**  
 25 **depiction of aesthetic impacts that are going to be caused**

1 **Q. All right. So I do want to make -- just to be clear. We**  
 2 **have been so far talking about the affected environment,**  
 3 **which is the existing environment.**  
 4 **Now we're going to move our discussion into the impacts.**  
 5 **And so page 3.169 is the beginning of that chapter where**  
 6 **they discuss impacts of the MHA proposal; is that right?**  
 7 A. Right.  
 8 **Q. Okay. And continue. Sorry.**  
 9 A. No. That's okay. I'm just trying to find the -- the line.  
 10 So under -- under the 3.3.2, Impacts, the EIS specifically  
 11 says that, because MHA is a broadly defined city-wide  
 12 program, the EIS does not provide a detailed or site-  
 13 specific analysis of aesthetic impact at any specific  
 14 location.  
 15 But to the extent that that's suggesting that it's not  
 16 doing it on a parcel-by-parcel basis, I would just note that  
 17 it's not doing it by neighborhood basis.  
 18 So nowhere in the EIS is there a description of the  
 19 changing to West Seattle Junction Urban Village.  
 20 **Q. So for example, I'm just going to throw out a hypothetical**  
 21 **here. If -- let's look at the Genesee area again, which is**  
 22 **that upside down hockey -- or upside down L.**  
 23 A. So that's the Edmunds slope.  
 24 **Q. Oh, Edmunds slope.**  
 25 A. Uh-huh.

1 **by the MHA proposal?**  
 2 A. Well, my reaction is that it -- it's not adequate for a  
 3 number of reasons. As you just pointed out, this is just,  
 4 like, a drawing of Anywhere U.S.A. Street. It doesn't look  
 5 like the West Seattle Junction.  
 6 And also, where the residential small lot is inter- -- is  
 7 supposed to be interspersed with the single family, it's way  
 8 to the back of the picture.  
 9 So residential small lot is just -- under MHA is two  
 10 25-foot structures allowed on a lot is my understanding,  
 11 which makes the structures much closer together, and also  
 12 has an impact on the front yard.  
 13 Those impacts can't be seen in this type of drawing,  
 14 because they're way in the back, and there's a car in front  
 15 of -- it's blocking your view, and you can't -- because  
 16 it's -- the angle it's taken, you can't tell how close they  
 17 are together.  
 18 **Q. Okay.**  
 19 A. Did you want me to go through --  
 20 **Q. Yeah.**  
 21 A. Did you want to ask (inaudible)?  
 22 **Q. I'm sorry. I was just thinking. We can, yeah, go to the**  
 23 **next one. And --**  
 24 A. Okay.  
 25 **Q. -- page 3.181. And what is this showing?**

Page 97

1 So we have already looked at in page -- in Exhibit  
 2 241-14 -- dash 14 exactly what a lowrise 2 building would  
 3 look like next to a house. These pictures on pages --  
 4 **Q. And that's, by the way, a lowrise 2 under the current**  
 5 **zoning?**  
 6 A. Yes.  
 7 **Q. So it would actually with M added to it --**  
 8 A. No. It's lowrise 2. It's NC-40 right now.  
 9 **Q. Okay.**  
 10 A. So it's a 40-foot apartment building. But under the new  
 11 lowrise 2, which would have a 40-foot height limit.  
 12 **Q. Oh, I see.**  
 13 A. That's the height we're looking at.  
 14 **Q. Okay. Okay.**  
 15 A. So we know what that would look like, these pictures,  
 16 they're aerial shots, first of all.  
 17 **Q. And so what's the significance of it being an aerial shot?**  
 18 A. Because you can't tell how tall it actually is --  
 19 **Q. Okay.**  
 20 A. -- at all. They look like Legos. They're not -- they don't  
 21 even attempt at this point to -- to look like actual  
 22 structures.  
 23 The only one that maybe is next to a single family is on  
 24 page 27. And the picture at the top, it's cut off, but I  
 25 assume that that's supposed to be single family on the left.

Page 98

1 But again, these look like Legos, and it's an aerial  
 2 structure. It's not helpful to see -- you can't see a  
 3 height difference obviously in that picture.  
 4 And then there's -- there's again no -- no reference to  
 5 any topography of the neighborhood in these pictures.  
 6 **Q. For the existing --**  
 7 A. Well, aesthetic, or -- or you know, what the houses actually  
 8 look like that aren't, you know, Legos.  
 9 **Q. And is this document dated, are you aware? Or did you look**  
 10 **for a date? Did you see any date?**  
 11 A. I didn't look for a date.  
 12 **Q. Okay.**  
 13 A. But it --  
 14 **Q. Do you see --**  
 15 A. It's not on the first page.  
 16 **Q. Do you have -- from looking at the --**  
 17 A. Well, it -- it does say -- it does -- no. Actually, no.  
 18 I'm sorry. I don't know.  
 19 **Q. Page 4.**  
 20 A. Oh, the models in this study reflect public input received  
 21 since June of 2016. It says that under Community Input.  
 22 **Q. And this is a draft for public input, so it's sometime**  
 23 **before the summer of 2017 --**  
 24 A. Yes.  
 25 **Q. -- this was put out?**

Page 99

1 A. You can tell that from the first sentence, because it says  
 2 the City will not complete adopting zoning changes until  
 3 summer of 2017. So that's --  
 4 **Q. So is there anything in here that would confirm for us that**  
 5 **this is the actual proposal that is being the preferred**  
 6 **alternative, this represent -- these graphics even show us**  
 7 **what the preferred alternative is?**  
 8 A. No.  
 9 **Q. Okay. All right. So we're going to do a quick discussion**  
 10 **about the land use impacts, the comprehensive plan, and**  
 11 **neighborhood plan issues, and that is then Chapter 3.2.**  
 12 **Have you reviewed the chapter in the Exhibit 2, MHA EIS 3.2?**  
 13 A. Yes. Sort of struggling to get there, though.  
 14 **Q. Oh, sure.**  
 15 A. Can you (inaudible).  
 16 **Q. Yeah. It's page 3.100.**  
 17 A. Okay. Oh, I'm there. I'm sorry.  
 18 **Q. Are you there? Okay. So this chapter, like the aesthetics**  
 19 **chapter, has a section on affected environment, and then it**  
 20 **has a later section on impacts, which is what EISs do.**  
 21 **Have you -- or does the affected environment section**  
 22 **contain a description of the land use zoning, specifically**  
 23 **in the context of the West Seattle Urban Village as it is**  
 24 **now?**  
 25 A. No, it doesn't. What it does basically is discuss what

Page 100

1 urban centers and urban villages are and -- just generally.  
 2 **Q. Just throughout the whole city?**  
 3 A. Yes. Like in a paragraph or so each. Then in a paragraph  
 4 or so each it -- it goes through what the existing zoning  
 5 designations within the urban villages and I think urban  
 6 centers are.  
 7 **Q. So that's 3.103, they're describing generally what single**  
 8 **family residential is, what multi -- so they're educating us**  
 9 **on what these different zones are?**  
 10 A. That's correct. And then the other thing that it does is  
 11 sort of generally talk about the ratios of the zoning within  
 12 the urban villages.  
 13 So for example, it does mention West Seattle Junction  
 14 Urban Village once, and it says that -- that a quarter of  
 15 the urban village usage is single family residential. But  
 16 it doesn't say every percentage of every zoning designation  
 17 for every urban village.  
 18 **Q. Okay. And does it describe what the West Seattle Junction**  
 19 **Urban Village actually looks like, or where it's located, or**  
 20 **what the context is for the single family use?**  
 21 A. No. Not at all.  
 22 **Q. Okay. And other land uses, and what the other land uses are**  
 23 **in the urban village, does it describe that?**  
 24 A. Not really, no. The -- I mean, only reference to West  
 25 Seattle Junction Urban Village in that section is with

CUNDIFF, Craig

MOEHRING, David

Hearing - Day 11 - 8/20/2018

Page 201

1 HEARING EXAMINER: I understand.  
2 MS. NEWMAN: I didn't mean to not disclose it. I just  
3 didn't consider this to be expert. I thought it was lay  
4 witness testimony.  
5 HEARING EXAMINER: I -- how does --  
6 MS. NEWMAN: I truly thought it was a person just telling  
7 us what the zoning is.  
8 HEARING EXAMINER: But it isn't just the zoning. It's an  
9 edge effect. It's an impact. It should have been  
10 disclosed.  
11 MS. NEWMAN: But we haven't described the impacts. We're  
12 just talking about what the zoning is.  
13 HEARING EXAMINER: What the edge effect is.  
14 MS. NEWMAN: Literally just identifying --  
15 HEARING EXAMINER: I mean, again, when I look at the maps,  
16 it's not looking at just -- at least as far as H-64, if I  
17 look at the salmon area, if we look just up to the upper  
18 right-hand corner, there's a series of four boxes, and they  
19 don't match any particular zoning edge. Their boxes  
20 encompass an area.  
21 MS. NEWMAN: I think what that is supposed to -- the box  
22 is showing a spot where the zoning is single family adjacent  
23 to neighborhood commercial. That's what the box is showing.  
24 MR. MOEHRING: That's correct.  
25 HEARING EXAMINER: So can you clar- -- can the witness

Page 202

1 clarify what the boxes represent? Because I -- plain just  
2 looking at them, not knowing where we're at here, it says to  
3 me, height and scale edge impacts excluded from MHA EIS,  
4 which is the title.  
5 MS. NEWMAN: Uh-huh, right.  
6 HEARING EXAMINER: So if I looked at this, and there's no  
7 explanation in this document as to what is surrounded by  
8 these red dots that are added by the witness, I would  
9 immediately assume the height and scale edge impacts are  
10 defined by those lines.  
11 And that's why I was asking for any plain explanation in  
12 the document itself that would lay that out, partly because  
13 that would have warned the City as to what this was about in  
14 advance.  
15 MR. MOEHRING: Well, the title of the document is height  
16 and scale edge impacts excluded from the MH FEIS.  
17 So the MHA FEIS covers all the urban villages, right? It  
18 does not cover what's outside of the urban village.  
19 So these boxes highlight those areas where there's a  
20 change in zoning that is impacting, that is obviously a  
21 height difference. If any --  
22 HEARING EXAMINER: But you include areas within the urban  
23 villages, too. I mean, I think --  
24 MR. MOEHRING: Yeah.  
25 HEARING EXAMINER: -- I'm looking at an urban village on

Page 203

1 H-64.  
2 MR. MOEHRING: Right. Yeah. And the same thing there.  
3 There is areas inside the urban villages where there is  
4 significant height changes with the zoning that's been  
5 identified.  
6 I'm not offering any -- any opinions. I'm simply looking  
7 at the documents that were issued by the City, and calling  
8 those out as inquired. My understanding that's just simply  
9 providing facts of a fact witness.  
10 MS. NEWMAN: If I could just add one more thing.  
11 HEARING EXAMINER: Let me hear from the City.  
12 MS. NEWMAN: Okay.  
13 HEARING EXAMINER: I mean, if he's just describing where  
14 the heights are, wherever they are, and as I understand it  
15 from the witness, your red lines do not match exactly where  
16 the heights are? They're just maybe circling this general  
17 area where they may occur?  
18 MR. MOEHRING: Right.  
19 MR. KISIELIUS: If that -- if that is -- if it's just  
20 circling in a non-precise way those locations where there is  
21 that differential -- I mean, I think the City's objection  
22 stands here. There's an amount of this that is getting --  
23 And I don't hold as limited a view as Ms. Newman does of  
24 what an architect's credentials limit them in their role in  
25 these types of issues.

Page 204

1 So I -- if there really is nothing behind those lines  
2 other than to generally identify locations without any  
3 precision, then the witness -- then we can keep trying to  
4 go.  
5 I'll reserve my more specific objections as -- if I hear  
6 them. But --  
7 HEARING EXAMINER: And I understand. I mean, part of this  
8 is I'm looking at it, just never having seen it before, and  
9 not trying to see it one way or the other. But when I look  
10 at it, it looks like you're showing what your title says.  
11 MS. NEWMAN: Well, that's --  
12 HEARING EXAMINER: So I can go with your explanation. But  
13 let's --  
14 MS. NEWMAN: Okay.  
15 HEARING EXAMINER: If I were going to show where the  
16 impacts were, I would draw a line where the impacts were.  
17 MS. NEWMAN: Yeah. But the impacts are defined by the  
18 fact that there is a certain zone next to a single family  
19 zone within those red dots.  
20 HEARING EXAMINER: That's what I'm hearing, yeah.  
21 MS. NEWMAN: Yeah.  
22 HEARING EXAMINER: I'm just saying that, for example,  
23 if -- again, looking at H-64, those upper right-hand corner  
24 squares go beyond the edge. They encompass an area.  
25 And I can well imagine that a witness would say the

Page 205

1 impacts go beyond those people that are immediately  
 2 adjacent. Maybe it's shadows. Maybe it's noise. I don't  
 3 know what that impact could be.  
 4 We're excluding that from testimony to the degree you  
 5 would go there. But I understand you're not saying that  
 6 today.  
 7 MR. MOEHRING: Right.  
 8 HEARING EXAMINER: That is simply --  
 9 MS. NEWMAN: And so if a lay witness said that, would you  
 10 accept a lay witness saying that?  
 11 HEARING EXAMINER: For the value it was. But we're not  
 12 there at this point really. I mean, it is --  
 13 MS. NEWMAN: I'm just -- okay.  
 14 HEARING EXAMINER: I guess to clarify, Mr. Moehring is  
 15 essentially not a lay witness on this subject, in my  
 16 opinion, and should have been disclosed as an expert for  
 17 purposes of this.  
 18 And I understand that there's a difference of opinion on  
 19 there. But that is how I would view someone with your --  
 20 with Mr. Moehring's background.  
 21 You view this is they bring a specialized lens to identify  
 22 these type of community impacts that somebody just looking  
 23 at it might not see. And so that's where the tension is.  
 24 And so to a degree that he's here to speak as an expert,  
 25 that is excluded, and I sustained the City's objection.

Page 206

1 To the degree he's simply a fact witness, the appellants  
 2 have provided this document to the City in advance, and a  
 3 mere description of it doesn't step over the line of Mr.  
 4 Moehring being an expert, so long as these lines simply  
 5 depict a general area where there is an edge between a  
 6 difference in one zone and another.  
 7 Because any witness could describe that, as the appellants  
 8 have pointed out  
 9 MS. NEWMAN: Okay. We'll stick to that.  
 10 A. Yeah. So --  
 11 **Q. (By Ms. Newman) So sticking to that limited scope, let's**  
 12 **look at the Greenwood Phinney Ridge H-43, and just describe**  
 13 **factually, within the scope of what the Hearing Examiner**  
 14 **directed, what that -- facts, the facts that we're**  
 15 **presenting here.**  
 16 A. Okay. So H-43 shows a map of the -- basically Greenwood  
 17 running north to south. And you'll see the urban village  
 18 area that's along the urban village that basically flanks  
 19 that street. There's also a cross street.  
 20 But basically there is a lot of areas in this urban  
 21 village, again the salmon-color areas, which were either  
 22 zoned C-40 or 40 feet, and now going up to 55 as in -- as in  
 23 the very top, that -- that salmon-color area that's just  
 24 outside of the urban village to the top.  
 25 **Q. And you know that it's going to that -- if -- I mean, it's**

Page 207

1 **hard to read these because they're so small.**  
 2 A. Yes.  
 3 **Q. But if we had this blown up, is that information that you're**  
 4 **giving us about what the changes are on this piece of paper**  
 5 **that we're looking at, this map? I mean --**  
 6 A. No. You'd have to look at the city's website.  
 7 **Q. Oh.**  
 8 A. To see what the actual height is, because the city -- or let  
 9 me just say the document did not post that information on  
 10 here, because they basically neglected to consider the areas  
 11 outside of the urban village.  
 12 **Q. Oh, so the zoning in the gray is not shown is what you mean?**  
 13 **Oh, the areas outside of the urban village --**  
 14 A. The areas --  
 15 **Q. -- are not?**  
 16 A. -- outside the urban village.  
 17 **Q. Okay.**  
 18 A. Right  
 19 **Q. Okay. Okay. Okay.**  
 20 A. And I guess these are the small examples. But if you look  
 21 at the city map in general, there's a large proportion of  
 22 these, like, salmon-color areas outside the urban village  
 23 which are having increases of height.  
 24 **Q. So where would a map like that be? If you say look at the**  
 25 **city map in general.**

Page 208

1 A. Well, let's look at the MHA FEIS document page --  
 2 **Q. The appendix?**  
 3 A. No. Within the -- within the land use section there's a map  
 4 of the city of Seattle. And it's page 3.105.  
 5 **Q. Okay.**  
 6 A. If everybody's there, I'll start.  
 7 HEARING EXAMINER: 3.105?  
 8 A. Is the page, yeah. And it's the City's -- or it's the MHA's  
 9 Exhibit 3.2-2, existing land use categories.  
 10 **Q. (By Ms. Newman) Okay.**  
 11 A. So on this map of Seattle you'll -- again you'll see the  
 12 urban villages and the urban centers I believe as they're  
 13 described in the heavy border or at the -- the drawing  
 14 actually says in the MHA study area, so everything that you  
 15 see with a heavy border around it is included within the MHA  
 16 FEIS.  
 17 **Q. Uh-huh.**  
 18 A. You'll see a large portion of the city is not within those  
 19 borders, and yet a large portion of the city -- of the city,  
 20 as you can see by the existing land use color-coded  
 21 category -- color coded categories, such as commercial,  
 22 mixed use, multifamily, those do have the same height  
 23 increases being applied to them, regardless if they're in  
 24 the urban village or not.  
 25 So there's a large amount of the city which is being

Page 209

1 impacted and not being evaluated --

2 **Q. Okay.**

3 A. -- in the study. Such as be shown in those prior examples.

4 And there's actually entire neighborhoods that are not being

5 considered.

6 **Q. And that's because every single area in the city that's**

7 **currently zoned neighborhood commercial is going to be**

8 **upzoned by the MHA proposal?**

9 A. They were selective. What I saw is some that were NC-30

10 they made into -- they kept as 30. Some they went from 30

11 up to 65. So that they selectively chose which ones and

12 really didn't offer an explanation that I could see which

13 ones they chose to -- to increase in height.

14 **Q. Well, is anything that's zoned NC-130 going to be upzoned to**

15 **NC-140 in the whole city?**

16 A. Not everything is, from what I saw.

17 **Q. Oh, the majority of areas?**

18 A. Pretty much the majority, yes.

19 **Q. And --**

20 A. From what I saw.

21 **Q. There's other commercial zones and lowrise zoned where it's**

22 **the same outside of urban villages and urban centers, all of**

23 **those are upzoned to different heights is what you're**

24 **saying?**

25 A. Yes.

Page 210

1 **Q. Okay.**

2 A. So say for example, if it's NC-3, which I understand is

3 going up from 40 feet in height, which it is currently up to

4 55 feet with the MHA, there is neighborhood -- I'm sorry,

5 LR3. Did I say NC-3? Strike that.

6 LR3, which is going from 30 feet -- 40 feet to 50 feet.

7 LR3 exists both inside the urban villages and outside the

8 urban villages.

9 **Q. Okay.**

10 A. So height impacts will be far reaching and beyond that --

11 that was included in the study.

12 **Q. And does the EIS talk about this at all, what you've just**

13 **shown us? Does it -- does it have this information in it?**

14 A. They do mention it at one -- they mention a part of it at

15 one document. They kind of dismiss it as an issue as saying

16 that it's something that every city has.

17 **Q. And where -- let's look at that. 3.117?**

18 A. Yes.

19 **Q. Is there -- so is this -- you said they did talk about it.**

20 **Is this the page where they talk about the issues?**

21 A. Yeah. Basically if you look under the part that says edges,

22 read that paragraph. Or I can read it if you like,

23 HEARING EXAMINER: The page number again?

24 MS. NEWMAN: 3.117.

25 **Q. (By Ms. Newman) And so other than that, is there any other**

Page 211

1 **place in the EIS that you're aware of where they discuss the**

2 **adjacent -- the idea that single family zones are**

3 **immediately adjacent to zones such as neighborhood**

4 **commercial or lowrise that are above 30 feet high on the --**

5 **outside of the areas that are in the study area?**

6 A. There was the one, again one excerpt that referred to what

7 other cities are doing outside of Seattle, but I don't know

8 where that is.

9 **Q. Okay. Well, let's focus on 3.117. Have you read that**

10 **description that follows the word "edges"?**

11 A. Yes.

12 **Q. And what's your reaction to that?**

13 A. I think it's missing a few of the impacts of edges.

14 MR. KISIELIUS: Mr. Examiner, I'm going to renew my

15 objection. This is now straying into technical expertise

16 about what is included in an edge impact and what is not.

17 HEARING EXAMINER: Ms. Newman?

18 MS. NEWMAN: I just -- I'm still having -- struggling over

19 the idea that -- his architectural expertise is not

20 necessary to be able to describe edge impacts. And I just

21 had intended to have him as a lay witness, just like I had

22 had on my -- I have several lay witnesses, and they're all

23 going to have very similar testimony to this.

24 And I just think that there's not much difference between

25 what he's saying and what they're saying, and there's

Page 212

1 nothing about his architectural expertise that's -- it's

2 informing.

3 He's not giving an opinion. He's just describing, as a

4 layperson, a person who lives in a neighborhood, what

5 impacts are.

6 MR. KISIELIUS: If I might, that's not what he was about

7 to testify to. He was about to offer an opinion about what

8 edge effects should be, what you should look at in an

9 analysis.

10 HEARING EXAMINER: Yes. And that's where I'm

11 understanding where the City's objection is based.

12 Mr. Moehring, as taking if we pretend he's not an

13 architect, is certainly permitted to talk about lines on a

14 paper that he's drawn to generally show an area. He an

15 opinion -- as anyone could, on what the EIS itself says.

16 But we have no foundation except his expertise to understand

17 that he has an opinion or -- and the formed opinion on what

18 edge impacts are.

19 MS. NEWMAN: Okay.

20 HEARING EXAMINER: That's a -- I mean, it speaks for

21 itself to me. It's what edge impacts are, because he's --

22 and there hasn't been anything else discussed here except

23 that expertise. So if there's some other reason he's an

24 edge impact commentator, we haven't discussed that.

25 MS. NEWMAN: Well, I was going to -- I mean, what I'd like



Page 213

1 to do is ask -- are the impacts of having an NC-3 zone like  
 2 you've shown in here next to a single family zone, what are  
 3 those impacts going to be, and are they significant?  
 4 MR. KISIELIUS: And I'm going to again object. I think  
 5 this is the very nature of expert testimony. You're asking  
 6 him to give an opinion as to an impact that's informed by  
 7 his credential.  
 8 HEARING EXAMINER: And evaluate not only what they are,  
 9 but the size, the volume. I don't see how he can cut out  
 10 the fact that he's an architect and has experience in the  
 11 developed world to answer that question.  
 12 So I'll sustain the objection.  
 13 MS. NEWMAN: Okay. I think I have no further questions  
 14 then. Yeah. No further questions.  
 15 HEARING EXAMINER: Okay. Cross.  
 16  
 17 CROSS - EXAMINATION  
 18 BY MR. KISIELIUS:  
 19 Q. Mr. Moehring, I have just a couple questions. Tadas  
 20 Kisielius on behalf of the City.  
 21 I just wanted to get an understanding of -- which sections  
 22 of the EIS did you review before you testified today?  
 23 A. Several sections. There was some zoning maps that were  
 24 issued. I think it was a map that just basically showed  
 25 where specific areas of the city have -- have changed in

Page 214

1 terms of heights.  
 2 There is also a map that was issued that indicated areas  
 3 that were not going to be impacted. I looked at of course  
 4 .2 in the MHA, 3.3 on aesthetics.  
 5 I also looked at the direct -- SDCI director's opinion, so  
 6 several, several documents.  
 7 Q. Okay. But you looked at all of section 3.2?  
 8 A. Yes.  
 9 Q. Not just excerpts?  
 10 A. Right.  
 11 Q. Okay. And I want to just ask for clarification on this  
 12 sorting exercise here. When you were looking at portions on  
 13 the map, you're making a comparison and said you're  
 14 interested in a differential of greater than -- I think you  
 15 said 30 feet; is that correct?  
 16 A. I think I corrected that.  
 17 Q. What was --  
 18 A. Anything -- anything 50 feet or higher --  
 19 Q. That --  
 20 A. -- to a 30-foot zone.  
 21 Q. That's -- okay. So that's the source of my confusion.  
 22 You're comparing -- let me say it, and see if you agree with  
 23 this.  
 24 You're comparing what a height may be allowed in an area,  
 25 and comparing it to an adjacent area and subtracting those

Page 215

1 two; or are you just looking at anything where it's 50 feet  
 2 in any area adjacent to those 50 feet?  
 3 A. If that adjacent area is 30 feet or less, correct.  
 4 Q. Okay. And I just want to get a little more clarity on your  
 5 understanding of the study area. So you were testifying to  
 6 what you believed was included in the EIS --  
 7 A. Uh-huh.  
 8 Q. -- and what wasn't. And here I think you were referring --  
 9 and I'll try to find it quickly.  
 10 Let me actually just draw your attention to page 2.3.  
 11 This is of the EIS, which is Exhibit 2 in front of you  
 12 there.  
 13 A. 2.3?  
 14 Q. Uh-huh.  
 15 A. Okay.  
 16 Q. So I think your testimony was -- the part that confused me  
 17 and where I was looking for more clarity was the testimony  
 18 about the portions of the city outside of the urban villages  
 19 that are subject to the proposal.  
 20 So I'm wondering if there are any -- if there is -- if you  
 21 can tell me from this map, do you see the teal there that  
 22 shows the EIS study area?  
 23 A. Yes.  
 24 Q. And do you see the blackout lines that show the areas of the  
 25 urban villages?

Page 216

1 A. Yes.  
 2 Q. Is there anyplace in the city that's outside of an urban  
 3 village that's not shown in teal that you think has not been  
 4 looked at in this EIS?  
 5 A. Yeah. What I -- basically from what I saw on the map in  
 6 section 3, there's a lot of areas that are outside of the  
 7 study area.  
 8 Q. Well, so why don't you -- let's step back.  
 9 What is your understanding of the study area?  
 10 A. I'm looking at -- again at Exhibit 3.2-2 where it shows a  
 11 heavy border and a portion of in MHA study area. And then  
 12 right below it says outside MHA study area. So anything  
 13 with a light border or no border is outside of the study  
 14 area.  
 15 Q. Okay. So that's the basis of your testimony?  
 16 A. Correct. It's actually in the land use section.  
 17 Q. This is the one on page 3.105?  
 18 A. Yes.  
 19 Q. So is it your understanding -- I'm going to ask you to get  
 20 this. It may be difficult, but I'm kind of toggling now  
 21 between page 3.105 and 2.3. Those are the two maps that we  
 22 were just looking at.  
 23 A. Uh-huh.  
 24 Q. So I just want to make sure I'm understanding. If we were  
 25 to look at the map you started with on 3.105, and do you see

Page 217

1 in the upper right-hand corner there's Lake City?

2 A. Yes.

3 **Q. And then there is the -- sort of an orangy-red path down**

4 **towards Green Lake?**

5 A. From Lake City?

6 **Q. Yes.**

7 A. Yes. Right.

8 **Q. So would you recognize that as Lake City Way, at least part**

9 **of it?**

10 A. Right.

11 **Q. And is it your testimony that that's outside the study area?**

12 **Is that your understanding?**

13 A. According to the two maps in section 3, that's correct.

14 MR. KISIELIUS: Okay. I don't have any further questions.

15 Thank you.

16 MS. NEWMAN: I have a little bit --

17 HEARING EXAMINER: Redirect?

18 MS. NEWMAN: -- of redirect, yeah.

19

20 **REDIRECT EXAMINATION**

21 **BY MS. NEWMAN:**

22 **Q. So I want to straighten this out, because I want to make**

23 **sure we have your testimony straightened out here.**

24 **So if you look at 2.3 in the EIS, which that's page 2.3.**

25 A. Okay.

Page 219

1 **study area? Did you?**

2 A. Yes. And in 3.101.

3 **Q. Okay.**

4 A. Which is it repeats the same information, little less

5 detail.

6 MS. NEWMAN: Okay. I have no further questions.

7 HEARING EXAMINER: Thank you, Mr. Moehring. Sorry your

8 testimony was truncated by procedure once again. I'm sure

9 that I will hear the full force of your testimony someday,

10 and I look forward to that moment.

11 MR. MOEHRING: Thank you.

12 HEARING EXAMINER: Appellants' next -- oh, let's actually

13 take a break. Come back at 4:00.

14 MS. NEWMAN: Thank you.

15 HEARING EXAMINER: Thank you.

16 (Recess)

17 HEARING EXAMINER: Appellants' next witness.

18 MS. NEWMAN: Thank you, Your Honor. I also did not -- I

19 don't know if I did have a leftover with getting that

20 exhibit in.

21 HEARING EXAMINER: Right. 245.

22 MS. NEWMAN: Moving to admit, yeah.

23 MR. KISIELIUS: I'm sorry. Were you moving for admission?

24 MS. NEWMAN: Yeah.

25 HEARING EXAMINER: She has.

Page 218

1 **Q. That page shows us the -- in green the EIS study area; is**

2 **that right?**

3 A. Yes, I think so.

4 **Q. And so you see that there is green shown outside of urban**

5 **villages?**

6 A. Uh-huh.

7 **Q. So the study area actually does include land outside of**

8 **urban villages? I can see how this is confusing.**

9 A. Uh-huh.

10 **Q. So then you look at page 3.105 --**

11 A. Uh-huh.

12 **Q. -- which is what we were just looking at, and it says that**

13 **in MHA study area are only the areas that have bold black**

14 **around them.**

15 A. Correct.

16 **Q. And so you interpreted that to mean that the MHA study area**

17 **was limited?**

18 MR. KISIELIUS: I'm going to object. This is -- that's

19 not a question. That's a statement.

20 **Q. (By Ms. Newman) Okay. How did you -- do you see that the**

21 **study area, after looking at page 2.3, is actually including**

22 **some areas outside of urban villages?**

23 A. Yes. But I haven't read section 2, so I'm not sure what

24 that really means.

25 **Q. Okay. But you -- and you interpreted 3.105 as defining the**

Page 220

1 MR. KISIELIUS: Okay. With the extent of the limitation

2 of the testimony, we don't have an objection to having it

3 entered.

4 HEARING EXAMINER: And under those circumstances, it is

5 admitted.

6 MR. KISIELIUS: I guess --

7 HEARING EXAMINER: The context of the objections that have

8 already been ruled upon.

9 MR. KISIELIUS: And if I could ask for a clarification, I

10 would appreciate it, from the Examiner's standpoint, that

11 you had mentioned earlier preserving for the appeal,

12 striking of the qualifications for the appeal record would

13 be I think helpful additional item. Because --

14 HEARING EXAMINER: Is Appellant amenable?

15 MS. NEWMAN: I think the transcript is going to say

16 (inaudible).

17 HEARING EXAMINER: I think at this point we've talked

18 about him being an architect --

19 MS. NEWMAN: Yeah.

20 HEARING EXAMINER: -- more than (inaudible).

21 MS. NEWMAN: So I'm sure a judge would see that. But I'm

22 fine -- I'm fine with whatever the Examiner prefers. Or I

23 don't have an objection to removing it.

24 MR. KISIELIUS: I thought the proposal was a helpful one.

25 MS. NEWMAN: Okay.

BRADBURD, William

Page 257

1 **Q. Sure.**  
 2 A. -- talk a little bit more about the land use impacts --  
 3 **Q. Yeah.**  
 4 A. -- section? So -- so you know, on page 3.111 where you talk  
 5 about scale change, so they're listing impacts, land use  
 6 impacts that can come from that, so we talk about changing  
 7 setbacks and that sort of thing. And then they give a for  
 8 example. For example, an increase in height of midrise  
 9 building from four to five stories with the same uses were  
 10 not typically required to adverse land use finding. Right?  
 11 The problem is, is that they're not going to five stories.  
 12 They're going to 80 feet, or eight stories. So that's a 33  
 13 percent height increase in what the zone allows.  
 14 But they make it sound, you know, to the -- to the reader  
 15 that, you know, it's not going to be that big a scale  
 16 change, we're not going to see that kind of thing.  
 17 But I think where it gets even more misleading is in the  
 18 table. And I don't know about you, but as a reader of  
 19 information, tables, and graphics, and all that kind of  
 20 thing are really -- potentially have far more meaning  
 21 than -- than the words and the text. And I -- I find a  
 22 number of errors in the way that they present this.  
 23 So we're talking now about the land use impacts based on  
 24 the zoning changes, and there's the M zone, and M1, and then  
 25 M2 zone.

Page 258

1 **Q. Just are you looking at page 3 --**  
 2 A. I'm sorry. Page 3.113.  
 3 **Q. Exhibit 3.2?**  
 4 A. 3-2-3 and 3-2-4 are the ones I'll talk to, because those are  
 5 the ones relevant to my urban village. But those charts  
 6 talk about land use impacts in terms of density, use, and  
 7 scale.  
 8 **Q. And this is specific to a certain zone, like a single family**  
 9 **zone being changed internally to residential small lot**  
 10 **zones?**  
 11 A. Yes.  
 12 **Q. So what's going to happen within them?**  
 13 A. The way -- the way -- the way this works -- and I'm sure the  
 14 city knows this. For -- maybe for the benefit of the  
 15 Hearing Examiner, if you're deeply immersed in this at this  
 16 point in time, but an M zone basically says it's a minor  
 17 upgrade in terms of development potential that's being  
 18 traded off for inclusionary zoning fee.  
 19 And then 1 means you're giving them more; and therefore,  
 20 you'll demand more, you'll have a higher. And then an M2  
 21 means you're giving the largest bump up.  
 22 So most of my urban village is deemed an M upzone, and  
 23 that's because the city is relying on the equity analysis.  
 24 And our urban village resides in the quadrants of the grid  
 25 called high displacement, high-accessed opportunity.

Page 259

1 And I would just note that -- that that -- and I've got a  
 2 lot of complaints about that.  
 3 But if you look at the urban village map, at the very top  
 4 part, just above my urban village is what's called the  
 5 Madison Miller Urban Village, historically part of the  
 6 central area as a whole. And when the central area did its  
 7 planning back in the '90s, all this was considered under one  
 8 neighborhood plan.  
 9 Well, the city has deemed that that's -- this urban  
 10 village just to the north of this is a low displacement,  
 11 high-accessed opportunity, so their designations are all M1  
 12 designations just across this one street here, Pine Street.  
 13 And in fact, the -- the -- they had written some comments  
 14 on the draft EIS about how come we're being treated  
 15 differently than our sisters and brothers across the street,  
 16 and getting larger upzones?  
 17 And the -- the City respond by saying, you're not allowed  
 18 to question our analysis under -- and they cited the WAC,  
 19 saying that our -- our methodology is not to be critiqued.  
 20 But anyway --  
 21 **Q. So let's look at the --**  
 22 A. But let's look at this M chart, which is mostly from my  
 23 neighborhood. We -- we didn't get a lot of M1. We got  
 24 mostly M.  
 25 And so it shows, for example, impact of going from a

Page 260

1 single family to an RSL, which is, like I said, that's about  
 2 40 percent of our land mass. The proposal would allow for  
 3 an increase in density of households, which is perhaps a  
 4 correct statement. No change is allowed from residential in  
 5 terms of use; and despite smaller front and rear yard  
 6 setbacks RSL contains the same height limit and introduces  
 7 an FAR limit. RSL buildings will not alter the land use  
 8 pattern. They do not present a scale impact.  
 9 And I would argue that that is absolutely imprecise. RSL  
 10 buildings do alter the land use pattern because you would  
 11 now allow two buildings on a lot instead of one. So an  
 12 existing building could be knocked down, and the two  
 13 buildings could replace that on the lot, and thereby  
 14 changing dramatically the street scape.  
 15 You know, this idea that you're walking down the block,  
 16 and see everybody's garden, and waving at neighbors, and all  
 17 of a sudden you have a building now that sits right there at  
 18 the street.  
 19 More importantly, in our neighborhood, and in these  
 20 neighborhoods that are currently single family, the nature  
 21 of these buildings is very unique. These are smaller-scale  
 22 buildings, smaller homes, typically one story, or maybe one  
 23 story over a partially submerged basement. They are -- some  
 24 are craftsman-style homes, so you're familiar with that  
 25 smaller craftsman house, or they are smaller Victorian

VOLUME 12

AUGUST 21, 2018

## Hearing - Day 12

### In the Matter of the Appeal of: Wallingford Community Council, et al.

August 21, 2018



**206.287.9066 | 800.846.6989**

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

[www.buellrealtime.com](http://www.buellrealtime.com)

email: [info@buellrealtime.com](mailto:info@buellrealtime.com)



BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of: )  
)  
WALLINGFORD COMMUNITY ) W-17-006  
COUNCIL, ET AL., ) through  
) W-17-014  
of the adequacy of the FEIS issued by the )  
Director, Office of Planning and )  
Community Development. )

Hearing, Day 12 - August 21, 2018  
Heard before Hearing Examiner Ryan Vancil

Transcribed by: Bonnie Reed, CET  
Court-Certified Transcription

EXAMINATION INDEX

1	WITNESS:	PAGE:
2		
3	BILL BRADBURD	
4	Direct Examination by Ms. Newman.....	5
5	Cross-Examination by Mr. Kisielius.....	35
6	Redirect Examination by Ms. Newman.....	55
7		
8	GREGORY HILL	
9	Direct Examination by Ms. Newman.....	60
10	Cross-Examination by Mr. Kisielius.....	136
11	Redirect Examination by Ms. Newman.....	161
12		
13	DENISE DERR	
14	Direct Examination by Ms. Newman.....	167
15	Cross-Examination by Mr. Kisielius.....	203
16	Redirect Examination by Ms. Newman.....	213
17		
18	MIRA LATOSZEK	
19	Direct Examination by Ms. Newman.....	216
20		
21	DAVID WARD	
22	Direct Examination by Ms. Newman.....	236
23	Cross-Examination by Mr. Kisielius.....	264
24		
25		

APPEARANCES

1	
2	
3	
4	On Behalf of Appellant Fremont Neighborhood Council:
5	TOBY THALER
6	Attorney at Law
7	Post Office Box 1188
8	Seattle, Washington 98111-1188
9	
10	On Behalf of Appellant Seattle Coalition for
11	Affordability, Livability & Equity:
12	CLAUDIA NEWMAN
13	Bricklin & Newman, LLP
14	1424 Fourth Avenue, Suite 500
15	Seattle, Washington 98101-2258
16	
17	On Behalf of Respondent City of Seattle:
18	TADAS KISIELIUS
19	JEFF WEBER
20	Seattle City Attorney's Office
21	701 Fifth Avenue, Suite 2050
22	Seattle, Washington 98104-7097
23	
24	
25	

EXHIBIT INDEX

NO.	DESCRIPTION	MARKED	ADMITTED
3			
4	246 Map - 23rd Avenue	--	56
5	247 Map - Wallingford	62	74
6	248 Lot size Distribution of lots	66	74
7	249 Photos - Mr. Hill	97	112
8	250 Neighborhood Plan - South Wallingford	117	167
9	251 Neighborhood Plan - South Wallingford Amendment	117	167
10	252 Map - Queen Anne	169	185
11	253 Larger map - Queen Anne	--	185
12	254 PowerPoint - Ms. Derr	184	215
13	255 Ward 4 - displacement	243	264
14	256 Aly Penucci email	251	264
15	257 Ward 9 - TRAO	254	264
16	258 Ward comment - Solutions to Seattle's Housing Emergency	260	264
17	259 Ward comment - MHA EIS	263	264
18			
19			
20			
21			
22			
23			
24			
25			

BRADBURD, William



1 they say it was about to happen, and then in the final  
 2 version, they talk about how it physically did happen.  
 3 **Q. I guess my very pointed question is, do you believe that the**  
 4 **design guidelines would still apply following adoption or**  
 5 **implementation of MHA?**  
 6 A. Well, the thresholds for design review -- full design review  
 7 have changed so that less projects go through full design  
 8 review.  
 9 And in -- you know, a lot of buildings in Neighborhood  
 10 Commercial, which is, you know, about -- I think about  
 11 20 percent of the Central Area, hit that threshold of going  
 12 through a formal design review.  
 13 But the Single Family that's going to Lowrise -- I mean,  
 14 that's going to RSL, which is about 40 percent of the land  
 15 area, and all the stuff that's currently in Lowrise that's  
 16 getting the bump up in MHA, a lot of that stuff does not go  
 17 through design review.  
 18 **Q. So those are the thresholds. I'll come back to that in a**  
 19 **second. I'm asking about those specific design guidelines**  
 20 **that you held up --**  
 21 A. Yes.  
 22 **Q. -- in your neighborhood.**  
 23 A. Yes.  
 24 **Q. What's your understanding of whether those --**  
 25 A. Do we need to make this an exhibit or is that --

1 **Q. No.**  
 2 A. Okay, I'm sorry.  
 3 **Q. Just what's your understanding. Are those -- do those still**  
 4 **exist after MHA?**  
 5 A. Oh, of course they do. The question is of what part of the  
 6 development will actually have to go and conform to those.  
 7 **Q. And are you aware of any changes proposed to the design --**  
 8 **the thresholds that trigger design review that are part of**  
 9 **MHA?**  
 10 A. My -- well, there's like an indirect connection, you know,  
 11 that perhaps greater development potential may push a  
 12 project that may be under a lower zone would not have gone  
 13 through design review if they could. I mean,  
 14 hypothetically, I think that could happen.  
 15 But what I am suggesting is is that most of the partial  
 16 development that we'll see under MHA will not go through  
 17 design review. And our design review guidelines, I'd like  
 18 to point out, does talk about things like try and minimize  
 19 rooftop decks because we know that rooftop decks do not  
 20 contribute to community. It creates this sense of  
 21 exclusivity and so on.  
 22 But the bulk of the projects that are being built do not  
 23 have to read that language because the thresholds are so  
 24 high that infill development does not use design guidelines.  
 25 So the authors of the design guidelines tried to minimize

1 some of these impacts, but the opportunity to actually  
 2 physically have that happen is reduced, yeah.  
 3 **Q. Thank you. I don't have any further questions for you.**  
 4 HEARING EXAMINER: Redirect?  
 5 MS. NEWMAN: Very quick.  
 6  
 7 **REDIRECT EXAMINATION**  
 8 BY MS. NEWMAN:  
 9 **Q. So if no design review, then the project doesn't have to be**  
 10 **consistent with the design guidelines?**  
 11 A. Correct, correct.  
 12 **Q. Okay. And earlier, can you clarify, were you -- when you**  
 13 **were talking about the existing development that's occurring**  
 14 **under the current zoning, were you describing for the**  
 15 **Examiner what the impacts -- the types of impacts can occur**  
 16 **from development, like lack of light, blocking views,**  
 17 **privacy impacts, shadow impacts, was that the purpose of**  
 18 **your narrative on that?**  
 19 A. Well, yeah, I mean --  
 20 **Q. Okay.**  
 21 A. -- I think there's two aspects which you asked me to come in  
 22 and talk about. One is the land use patterns which is the  
 23 physical built environment and the impacts of that. And the  
 24 second is the aesthetic character and how what potentially  
 25 could be laid into this neighborhood would be dramatically

1 different.  
 2 **Q. Right.**  
 3 A. Yes.  
 4 **Q. Okay, thank you.**  
 5 A. Yeah, okay, thank you.  
 6 MS. NEWMAN: I have no further questions.  
 7 HEARING EXAMINER: Thank you.  
 8 MS. NEWMAN: I think I need to --  
 9 Bill, can you give me the exhibit?  
 10 THE WITNESS: Oh, you want your map back?  
 11 MS. NEWMAN: Offer Exhibit 246 for admission.  
 12 HEARING EXAMINER: Any objection to 246?  
 13 MR. KISIELIUS: That's just the map?  
 14 MS. NEWMAN: Yeah, it's the oversized --  
 15 MR. KISIELIUS: No objection.  
 16 MS. NEWMAN: -- map.  
 17 HEARING EXAMINER: 246 is admitted.  
 18 Ms. Newman, is there anything else we need to do as far as  
 19 exhibits to wrap up from this?  
 20 MS. NEWMAN: Are there any more that I haven't --  
 21 HEARING EXAMINER: No, we're up --  
 22 MS. NEWMAN: We're up. Okay, that's where I forget. I  
 23 don't think so.  
 24 HEARING EXAMINER: Okay. We normally take a break  
 25 somewhere between 10:00 and 10:30.

HILL, Gregory

Page 61

1 and participated in the settlement which ended up with a  
 2 building on the corner, flat roof, no golden arches, 70-foot  
 3 sign instead of a 440-foot sign with parking swirling around  
 4 the building. So we had a better outcome, I think.  
 5 Since that time, I've been on the Land Use Committee and  
 6 been a chair from time to time.  
 7 **Q. For the Wallingford Community Council?**  
 8 A. For the Wallingford Community Council.  
 9 **Q. Which is an appellant in this case?**  
 10 A. That's correct.  
 11 **Q. Okay.**  
 12 A. And just also for the record, so I am an architect. I was  
 13 registered initially in Massachusetts in 1973, and I have  
 14 not done any housing --  
 15 HEARING EXAMINER: Just you might want to be careful.  
 16 MS. NEWMAN: Yeah, I --  
 17 HEARING EXAMINER: Ms. Newman's going to ask the  
 18 questions, so I wouldn't volunteer information.  
 19 THE WITNESS: Okay.  
 20 HEARING EXAMINER: I don't need your address. I don't  
 21 need any background.  
 22 MS. NEWMAN: Yeah.  
 23 THE WITNESS: All right.  
 24 HEARING EXAMINER: If Ms. Newman asks you a question, then  
 25 that's all we have to --

Page 62

1 **Q. (By Ms. Newman) So today -- the purpose of your testimony**  
 2 **today is in your role as a resident, and so I'm not going to**  
 3 **go into the history of your architectural --**  
 4 A. Career.  
 5 **Q. -- background?**  
 6 A. Okay.  
 7 **Q. Right. So we are going to discuss the aesthetic and land**  
 8 **use impacts in the Wallingford urban village with your**  
 9 **testimony, and we want to start with a map to get our**  
 10 **bearings.**  
 11 **Do you have in front of you --**  
 12 MS. NEWMAN: Mr. Examiner, if I could get this marked?  
 13 **Q. (By Ms. Newman) This is an oversized version of H-79 from**  
 14 **the Exhibit 2, which is the MHA EIS. It's similar to the**  
 15 **maps that we've been using. Do you have that in front of**  
 16 **you?**  
 17 A. Yes.  
 18 HEARING EXAMINER: Marked as 247.  
 19 MS. NEWMAN: Okay.  
 20 **Q. (By Ms. Newman) And have you seen this document before?**  
 21 A. Yes.  
 22 **Q. And can you tell us what this is?**  
 23 A. This appears to be the most recent version of the MHA map  
 24 for Wallingford. The dark line represents the portion of  
 25 the neighborhood that's actually in the village, and it

Page 63

1 shows various zones within the village and how they are  
 2 proposed to be changed. The map also shows colored areas  
 3 outside the village that will be impacted by the changes  
 4 that come about through MHFA.  
 5 **Q. Okay.**  
 6 A. MHA.  
 7 **Q. And when you say, "will be impacted," do you mean they'll**  
 8 **actually be upzoned?**  
 9 A. The zoning on the ground will not change, but as you're  
 10 aware, what can be done in every zone, the height and FAR  
 11 and so forth are all being modified.  
 12 **Q. So some may be -- the actual either development regulations**  
 13 **or the zoning itself will change as a result of the MHA**  
 14 **proposal?**  
 15 A. Outside the village it's the development regulations that  
 16 change.  
 17 **Q. Okay.**  
 18 A. Inside it's both -- what some have referred to as a double  
 19 upzone. It's the zoning itself is changing as well as what  
 20 can be done within each zone.  
 21 **Q. Okay. And can you give us just a general big-picture**  
 22 **description of the existing development patterns and**  
 23 **character and scale and land use within the Wallingford**  
 24 **urban village where you live?**  
 25 A. Right. So the vast majority of it is Single Family. Many,

Page 64

1 many, many bungalows. It's one of the neighborhoods built  
 2 turn of the century. It's a streetcar suburb. They  
 3 developed a streetcar line and built a lot of the houses.  
 4 My house is a 1908 version. Not a nice bungalow but an old  
 5 house, but most of the houses are, in fact, bungalows.  
 6 There are also scattered about very small scale, mostly  
 7 brick apartment houses. One here, one there. There is a  
 8 Commercial area along 45th Street that does have mostly  
 9 one-story, mostly brick buildings. It also has several  
 10 newer buildings that are four and five stories.  
 11 Similarly on Stone Way, the vertical top to bottom orange  
 12 area is a Mixed-use zoning down there, and it has both  
 13 older, one-story commercial buildings as well as four-  
 14 and -- three-, four- and five-story newer buildings that are  
 15 mixed-use.  
 16 **Q. Okay. And those are shown in the orange -- kind of the**  
 17 **orange, the two orange lines --**  
 18 A. Right.  
 19 **Q. -- one going --**  
 20 A. The Commercial is shown in orange.  
 21 **Q. Uh-huh.**  
 22 A. Existing Multifamily is shown in brown, sort of the darker  
 23 brown. And then within the village the lighter areas are  
 24 Single Family, and virtually everything outside the village  
 25 is Single Family.

1 **Q. Okay.**  
 2 A. There's nothing -- there's no gray -- well, there is a piece  
 3 of gray left, but it's a school property.  
 4 **Q. And they're being rezoned to what?**  
 5 A. So this property right here?  
 6 **Q. Uh-huh.**  
 7 A. Which is the only gray piece in here.  
 8 **Q. Uh-huh.**  
 9 A. Is a school.  
 10 **Q. Oh, okay.**  
 11 A. They're being rezoned to LR1, LR2. I believe there's a LR3.  
 12 I think that's it. Initially, the -- most the Single Family  
 13 was to be zoned RSL which in theory is a lesser zone.  
 14 **Q. Uh-huh.**  
 15 A. But as the zoning designations in the South End have gone  
 16 down because developers don't really want to build there,  
 17 they may have gone up here because this is where they really  
 18 do want to build. A square foot of apartment in Wallingford  
 19 is worth a lot more than the square foot of an apartment  
 20 in --  
 21 MR. KISIELIUS: I'm going to object. Now we're getting  
 22 into territory which is informed by his expertise, talking  
 23 about development patterns and trends throughout the city  
 24 that exceed --  
 25 HEARING EXAMINER: I'd overrule that. That could be

1 with Chapter 3.3 which is the Aesthetics Section. And does  
 2 that section contain a description of the existing land use  
 3 development patterns character and scale development within  
 4 the Wallingford urban village?  
 5 A. No.  
 6 **Q. And does it adequately discuss the land use -- I'm sorry,**  
 7 **just the aesthetic impacts in that chapter that the proposal**  
 8 **will have to your neighborhood?**  
 9 MR. KISIELIUS: I'm going to object again. Now we're  
 10 talking about adequacy and a judgment that -- we're towing a  
 11 fine line between expertise and fact witness. Those are  
 12 questions with a fact witness we wouldn't necessarily object  
 13 to, but it's on the record that this is an architect  
 14 whose -- has background that is -- puts him apart and sets  
 15 him apart from typical fact witnesses.  
 16 I also object that's legal conclusion.  
 17 HEARING EXAMINER: Response?  
 18 MS. NEWMAN: I once again just think that as a layperson  
 19 has -- as other laypersons have shown us that there's this  
 20 general understanding that if you live in a neighborhood  
 21 there are impacts to your life, to your livability, to your  
 22 lack of sunlight, your privacy, what -- you know, generally  
 23 what are the impacts going to be. And frankly, the question  
 24 is really pretty black and white as far as is there a  
 25 discussion about aesthetic impacts at all that exists in

1 common knowledge for -- the level of knowledge from the  
 2 citizens that we see in front of us, that could be anybody  
 3 could tell us that as their opinion. Not necessarily  
 4 informed by data from a -- for an architect.  
 5 MS. NEWMAN: Thank you.  
 6 **Q. (By Ms. Newman) Did you review the MHA EIS?**  
 7 A. I have reviewed 3.2, 3.3 and Appendix F.  
 8 **Q. Okay. Let's start with -- if you have in front of you that**  
 9 **large notebook to your right is Exhibit 2?**  
 10 A. Okay.  
 11 **Q. The EIS. And --**  
 12 MS. NEWMAN: And oh, you know, before I move on, because I  
 13 tend to forget to do these things, can I move for submittal  
 14 of 247 and 248?  
 15 HEARING EXAMINER: Any objection 247 or 248?  
 16 MR. KISIELIUS: No objection to 247. I guess I have a  
 17 question if -- are we going to hear more about this?  
 18 Because I'm not sure I understand --  
 19 MS. NEWMAN: No, it was just the general data.  
 20 MR. KISIELIUS: From any other witness on this?  
 21 MS. NEWMAN: No.  
 22 MR. KISIELIUS: Okay. We don't have an objection.  
 23 MS. NEWMAN: Okay.  
 24 HEARING EXAMINER: 247 and 248 are admitted.  
 25 **Q. (By Ms. Newman) Okay, so looking at -- I'm going to start**

1 Wallingford in this EIS.  
 2 HEARING EXAMINER: Overruled.  
 3 MS. NEWMAN: Okay.  
 4 **Q. (By Ms. Newman) So that means you can answer the question.**  
 5 A. You'll have to restate it.  
 6 **Q. Okay. Does the EIS adequately discuss the land use -- I'm**  
 7 **sorry, the aesthetic impacts that the proposal will have on**  
 8 **the Wallingford neighborhood? And you may -- well, I guess**  
 9 **that's the question. Does it discuss them adequately?**  
 10 A. So I don't find a thread that, in fact, describes the  
 11 neighborhood and then how various parts of the neighborhood  
 12 will be impacted.  
 13 Just for example, the first cut would be in the village  
 14 and outside the village because areas outside the village  
 15 are going to be impacted by the change and development  
 16 standards within the Lowrise zones, as well as in the  
 17 Commercial zones. So that's one set of impacts to one area.  
 18 And then within the village, there's this double upzone  
 19 thing going on, so there's going to be separate and more  
 20 intense impact in those areas.  
 21 So right away you'd have to describe those two areas and  
 22 then talk about what's in them and what's going to happen to  
 23 them. None of that is in here that I have found.  
 24 **Q. And what matters -- as a resident of Wallingford, are you --**  
 25 **do you live within the urban village?**

1 A. Oh, yeah.

2 **Q. So what matters to you about this proposal, and what -- what**

3 **are the impacts that you see, not to -- well, to you and to**

4 **your neighborhood, just that bring you to the table here?**

5 A. So Wallingford is a fairly cohesive environment in terms of

6 building types. There are, you know, one- and two-story

7 buildings along the Commercial area, and there are primarily

8 bungalow size buildings less than 30 feet tall and some

9 larger houses. Some of the larger houses are -- some new

10 houses are larger, but it's a fairly uniform area.

11 When large areas are rezoned, which is happening here, you

12 can expect that there will be new development that will

13 match what's possible, and it will be distinctly different.

14 So there will be a period of time when you have this really

15 disjointed thing. Eventually, it might look like a cohesive

16 neighborhood again, but in the meantime, it's going to look

17 like some weird amorphism of buildings.

18 Personally, I like growing tomatoes, so the notion that I

19 can't do that anymore is kind of making me mad.

20 **Q. Yeah. And so you said that it will gradually change, but**

21 **then what -- what will the change -- right now it looks --**

22 **it's -- you've said it's almost all Single Family. It's**

23 **very -- very largely Single Family.**

24 A. Uh-huh.

25 **Q. And there will be a transition time where it's going to be**

1 **you know, and I don't know if this is using architectural**

2 **expertise --**

3 A. So a 4000 square foot lot --

4 **Q. -- but how many square feet is --**

5 A. Is a tenth of an acre?

6 **Q. Is one-tenth --**

7 A. Roughly 5,000, a little bit more than a tenth.

8 **Q. So one-tenth of an acre -- okay. And these -- okay.**

9 A. So if you look at that chart we looked at, which is 174 --

10 **Q. Uh-huh.**

11 A. -- there are over 500 of the 700 are in that

12 tenth-of-an-acre category. And I can tell you having

13 listened to some lectures about geography that that's really

14 the sweet spot for getting people to use transit without

15 having to rebuild your infrastructure.

16 **Q. Uh-huh, okay. I just want to get this... All right. The**

17 **graphics on page 3.3-10 -- I mean, I'm sorry, I don't have**

18 **the page numbers. There are graphics in this Aesthetic**

19 **Section. Let me just find them. 3.178.**

20 A. Can I just make one comment about --

21 **Q. Yeah.**

22 A. -- Exhibit 3.3-2, Established Single Family Areas?

23 **Q. Sure.**

24 A. You were asking me earlier does it describe Wallingford.

25 And the -- the last sentence in that paragraph next to the

1 **kind of a hodgepodge.**

2 A. Uh-huh.

3 **Q. And then the end result, do you think -- or what is going to**

4 **be the aesthetic change from what it is now to what it will**

5 **be then?**

6 A. Well, first of all, the transition time given even the rapid

7 rate of development in the city today --

8 **Q. Uh-huh.**

9 A. -- is going to be very long. So the disjointed period, it

10 will certainly exceed my lifetime. And so that -- that's a

11 real problem. And you can say, "Oh, well, you can sell your

12 property and make money and go someplace else." But some of

13 us actually like living there, so we're not too excited

14 about that. And the fact that it will be this very long

15 period of disjointedness is problematic.

16 **Q. Okay.**

17 A. Wallingford incidentally has a lot of tiny lots. So the

18 actual density in our neighborhood is quite high, and the

19 transit ridership is already very high. So it's not like

20 we're -- have quarter-acre lots or two-acre lots or

21 something. These are one-tenth-of-an-acre lots, as the

22 chart that we looked at --

23 **Q. Uh-huh.**

24 A. -- supports.

25 **Q. One-tenth. What -- I -- I'm just curious. I don't know if**

1 exhibit is --

2 **Q. This is page 3.163 of Exhibit 2?**

3 A. Correct. "Single Family areas also exhibit a range of home

4 sizes with many older one- and two-story homes smaller than

5 the allowed zoning envelope for new Single Family

6 development." I think they're trying to suggest this is

7 somehow a problem. I'm not sure what. But the next one,

8 "Front yards with setbacks of 10 to 15 feet," blah, blah,

9 blah. Well, that's not in our neighborhood. Our

10 neighborhood has 20-foot setbacks, sometimes larger.

11 So this whole description of an established Single Family

12 area is not our neighborhood. Which I think goes back to

13 your earlier question about, did we see Wallingford

14 described here? Well, here's what's supposed to be the

15 majority of our neighborhood, and it's not describing it at

16 all.

17 **Q. And so when you said -- actually, take that back. Okay.**

18 **And then see that next picture with new infill single-family**

19 **housing, is there anything you had to add about that image**

20 **or whether that --**

21 A. So --

22 **Q. -- represents currently?**

23 A. -- the top image there is, of course, pretty hard to see,

24 3.3-2.

25 **Q. Uh-huh.**

1 was the double upzone, and I think you were also  
2 describing -- the distinction I think you were making is  
3 where you're changing the map as opposed to where you're  
4 just changing the text.

5 And I thought I heard you say in response to Ms. Newman's  
6 question about if you found any of that in the EIS, I  
7 thought I heard you say, "None of that is in here that I  
8 have found." So I guess I wanted to just make sure that I  
9 understood that correctly. Was it your testimony the EIS  
10 doesn't touch those subjects at all anywhere in the  
11 document?

12 A. I think her question to me was, "Have you found anything  
13 that describes how these two sections of Wallingford inside  
14 and outside will be impacted?"

15 Q. Okay. So that was -- your statement was specific to that  
16 distinction?

17 A. Uh-huh.

18 Q. Okay.

19 A. And the notion of double upzone came from a young woman who  
20 went to a hearing I was -- or to a public meeting. And  
21 stood up and said, "That's like a double upzone," so not my  
22 words, just --

23 Q. I appreciate it. And the distinction again you're making  
24 there with the double upzone is one in which you're changing  
25 the map and what you're changing it to also has different

1 Q. (By Mr. Kisielius) Now, I want to focus first on  
2 Established Single Family Housing Areas. Because I heard  
3 you testify about the last sentence, about front yards with  
4 setbacks 10 to 15 feet, and you made the distinction that  
5 that didn't reflect your neighborhood.

6 A. Wallingford is more like 20, 25 feet.

7 Q. Okay. And then I think I heard you say that the entirety of  
8 that paragraph doesn't describe Wallingford. I think you  
9 said, "Not at all." Is that your testimony, the rest of  
10 this paragraph doesn't describe Wallingford is not accurate  
11 for -- even limited to this --

12 A. Well, that's true too.

13 Q. I'm sorry --

14 A. For example --

15 Q. If we could just pause for one second, I need to be able to  
16 finish the question before you can start answering just for  
17 purposes of the record.

18 So the distinction I'm trying to ask you to make is it  
19 just that it's the setback piece that is not accurate for  
20 your neighborhood or is it the entirety of the paragraph  
21 that does not reflect Wallingford at all?

22 And maybe -- maybe what I'll have you do is to  
23 walk-through -- so the first sentence says, "Established  
24 Single Family areas are common in portions of the study area  
25 currently zoned Single Family Residential in urban

1 standards?

2 A. The development standards are changing, yes.

3 Q. Okay. So just to be clear, I understand the distinction in  
4 your testimony is more narrowed. Do you agree that the EIS  
5 discusses that aspect of the proposal?

6 A. I don't think -- I didn't find where it was making a clear  
7 distinction in terms of the impacts one versus the other.

8 Q. Okay, thank you. I'd like to draw your attention to figure  
9 3.3-2. And I'll give you a page number in just a second,  
10 because I have to find it myself, I apologize.

11 MS. NEWMAN: So is it Exhibit 3.3 --

12 MR. KISIELIUS: No, it's -- I'm sorry. It's Exhibit 2, so  
13 it's the EIS.

14 THE WITNESS: Establish --

15 MR. KISIELIUS: And it's --

16 THE WITNESS: -- Single Family -- it's 3.163.

17 MS. NEWMAN: I mean --

18 MR. KISIELIUS: Yes, thank you.

19 MS. NEWMAN: I was just reading the --

20 MR. KISIELIUS: I'm sorry, yes.

21 MS. NEWMAN: Do you see where I was --

22 MR. KISIELIUS: I see where you're going. I was --

23 MS. NEWMAN: Okay.

24 MR. KISIELIUS: So yes, we're all there. I'm finally  
25 there now, 3.163.

1 villages." So does Wallingford have established Single  
2 Family areas where --

3 A. It does.

4 Q. -- that zoning is in place?

5 A. Yes.

6 Q. "Most Single Family areas in Seattle have an established  
7 pattern of single-family homes"; is that accurate for  
8 Wallingford?

9 A. Yes.

10 Q. "And the ages of existing housing stock often span several  
11 decades"; is that consistent with Wallingford?

12 A. It's probably the low side, particularly in the next  
13 sentence. It's more like a 150.

14 Q. Okay. I'm sorry, I didn't understand the distinction you're  
15 making there.

16 A. They're 100 years old.

17 Q. Oh, I see, okay.

18 MS. NEWMAN: A typical --

19 Q. (By Mr. Kisielius) So you're saying the "several decades"  
20 is not representative enough?

21 A. I think it suggests, you know, it's like twenty or thirty  
22 years.

23 Q. Okay. "A typical block often has as many homes" -- "has  
24 many homes with an age of fifty years or older"; is that  
25 accurate?

1 A. It's older. Although, the way it's phrased makes it --  
 2 doesn't really capture what I think of as the neighborhood.  
 3 **Q. Well, I guess what I'm going at -- getting at here is your**  
 4 **testimony was that, "This does not reflect Wallingford at**  
 5 **all," were your words. And so what I'm hearing is it's a**  
 6 **little bit more nuanced, and I'm trying to explore that a**  
 7 **little bit more.**  
 8 **So when you said, "It doesn't reflect it at all," I'm now**  
 9 **hearing you say, "Well, it could have been changed to be a**  
 10 **little more reflective but" --**  
 11 MS. NEWMAN: Objection.  
 12 MR. KISIELIUS: -- "generally speaking" --  
 13 MS. NEWMAN: I'm not sure you're characterizing his  
 14 witness -- his testimony from my direct accurately, so if  
 15 you could --  
 16 **Q. (By Mr. Kisielius) Did -- did you say that this paragraph**  
 17 **does not reflect Wallingford at all?**  
 18 A. I think I'll go with that still, yeah.  
 19 **Q. Okay.**  
 20 A. If I was writing the paragraph to reflect Wallingford, the  
 21 first sentence is fine and the second sentence is fine. But  
 22 after that, it's not really reflective of Wallingford.  
 23 **Q. Are the -- and so the distinctions here you're making in the**  
 24 **sentences we've just discussed, are those incorrect or could**  
 25 **they have been dialed in more precisely?**

1 A. The one about the age could have been dialed in more  
 2 precisely. It's not correct. And the one about the  
 3 setbacks is clearly incorrect.  
 4 **Q. So it's not correct when you said, "Most of them are a 100**  
 5 **years old," that is to say 50 years or older. That's**  
 6 **incorrect in your mind?**  
 7 A. Yeah, because it's characterizing how old are the buildings,  
 8 and the buildings are -- more than not are a 100 years old.  
 9 **Q. Okay. And just to clarify where we started with this, you**  
 10 **said the setbacks in Wallingford are further than 10 to**  
 11 **15 feet, is that --**  
 12 A. Yes.  
 13 **Q. Okay, thank you.**  
 14 A. And that's important, because when you're weighing these new  
 15 changes where they'll be 5 feet, that makes a huge  
 16 difference in the streetscape.  
 17 **Q. I had a question for you about the images in Exhibit 3.3,**  
 18 **and that starts on page 3.178.**  
 19 **You testified to several of these. I had a really precise**  
 20 **question. I just wanted to make sure I understood what you**  
 21 **were saying. You made a characterization about trees that**  
 22 **were missing from one image to the next, and I just wanted**  
 23 **to make sure I understood what you were referring to. So do**  
 24 **you recall that testimony?**  
 25 A. Yes.

1 **Q. So can you give me an example?**  
 2 A. It was a later -- later image.  
 3 **Q. Okay, I just --**  
 4 A. Let's look at the first image since we're here.  
 5 **Q. Sure.**  
 6 A. On 3.178.  
 7 **Q. Okay.**  
 8 A. So the two things that are distinct here is on the  
 9 right-hand side, just above the dog, is a building that's  
 10 projecting out past all the others, and you wouldn't see  
 11 that in existing Single Family.  
 12 **Q. Are you referring to the one that's in gold?**  
 13 A. I have a black and white version so --  
 14 **Q. So you don't even -- you don't see the colors in your --**  
 15 A. No.  
 16 MS. NEWMAN: What page are we on?  
 17 MR. KISIELIUS: 3.179.  
 18 THE WITNESS: 178.  
 19 MR. KISIELIUS: On 178.  
 20 THE WITNESS: Yeah.  
 21 **Q. (By Mr. Kisielius) Okay. So on 178 are you referring to**  
 22 **the one that's blue or white?**  
 23 A. It's this one on the right immediately above where the dog  
 24 is, so this guy with the dog --  
 25 MS. NEWMAN: If you want to use the Exhibit 2, that might

1 be...  
 2 **Q. (By Mr. Kisielius) So was your testimony on the differences**  
 3 **between those pictures based on your black and white copy?**  
 4 A. No, I had -- I had the color one too. I just didn't bring  
 5 it.  
 6 **Q. Okay.**  
 7 A. Yeah, so I guess there is a blue building on the right-hand  
 8 side.  
 9 **Q. Is that the one you were just referring to as sticking out**  
 10 **further?**  
 11 A. Yes.  
 12 **Q. Okay.**  
 13 A. And then on the left-hand side, those --  
 14 **Q. Can I just interrupt you for a second? What is your**  
 15 **understanding of what's shown in blue there?**  
 16 A. Well, it says, "Single Family Zoning No Action," so I would  
 17 assume that's a single-family house or intended to be one.  
 18 **Q. Do you understand the distinction between the blue and the**  
 19 **white in that image?**  
 20 A. No.  
 21 **Q. Do you think it's important to understand that to testify**  
 22 **about what that's depicting?**  
 23 A. I think the average person that looks at this is just seeing  
 24 what's going on here and not necessarily reading everything  
 25 that's in here and then transporting it back into the image.

DERR, Denise



Page 193

1 meeting when I talked to him, and he just said, you know,  
 2 "We're not going to respond to any of these," you know,  
 3 "This will be torn down, and this will be built. This is  
 4 what we do."  
 5 **Q. And what is -- do you know what zone that piece of property**  
 6 **currently?**  
 7 A. You know, I don't know, but I would bet it's L1.  
 8 **Q. Is it near your house?**  
 9 A. It's -- well, it's on -- it's not in my immediate  
 10 neighborhood so --  
 11 **Q. Okay.**  
 12 A. Yep.  
 13 **Q. And do you know if this -- well, anyway, never mind.**  
 14 A. Yeah.  
 15 **Q. That's --**  
 16 A. And then the last one is just again this -- well, I guess  
 17 it's not the last one, sorry. The concern about the  
 18 encroachment into the ECAs.  
 19 **Q. And ECA means?**  
 20 A. Environmentally critical area.  
 21 **Q. Okay.**  
 22 A. This image on the left shows a box. This is a -- I think  
 23 there are two townhomes. This property was bought and  
 24 divided horizontally. And they built rowhouses in front,  
 25 and they built this right behind into the environmentally

Page 194

1 critical area. I tried to appeal it. We tried to get the  
 2 neighborhood. It was too costly. It's a shame that it  
 3 comes down to that.  
 4 The middle picture shows almost immediately behind my  
 5 house. The new neighbors bought it and wanted to do a  
 6 little patio, and the City actually had to stop it because  
 7 it is eroding and it's a dangerous slope and so they've had  
 8 to stop work on that.  
 9 **Q. Okay.**  
 10 A. And then I guess my last picture shows the emphasis and the  
 11 priority that our community places on a diversity of  
 12 buildings that tell a story, that have history, that have  
 13 evolved, that bring people, you know, an awareness of  
 14 another time and another place. And they're really well  
 15 maintained and beautiful. There's old churches, there's  
 16 cool old apartment buildings and we really value that.  
 17 **Q. So how will -- what are the changes that are being proposed**  
 18 **with the MHA proposal in the Upper Queen Anne urban village,**  
 19 **and how will they impact that area?**  
 20 A. Well, according to this map on H-77, you'll see a little  
 21 hatched area.  
 22 **Q. And you're referring to the page number, not the --**  
 23 A. I'm sorry, yeah, the page number I guess this is.  
 24 **Q. Okay. It's -- just if you look up to the right, it says**  
 25 **Exhibit H-76.**

Page 195

1 A. Oh, yes, Exhibit H-76. If you look at the top in the north  
 2 part, there's a hatched area. You can't read it very  
 3 clearly, the numbers, but what that means is that they want  
 4 to rezone this. They also want to rezone this area here.  
 5 **Q. What's this -- wait, so tell us what --**  
 6 A. In Galer.  
 7 **Q. What they want -- they're proposing to rezone the hatched**  
 8 **area from --**  
 9 A. Right.  
 10 **Q. From NC2P-40 to -- is it NC2P-75?**  
 11 A. Well, it looks like that.  
 12 **Q. Okay.**  
 13 A. Yeah, so in other words, you have this long rectangle, this  
 14 urban village, and they want to bookend us with much taller  
 15 buildings. Taller than -- well, we have I don't know how  
 16 many -- almost twice the size.  
 17 **Q. Twice the size of what?**  
 18 A. Of some of the existing buildings.  
 19 **Q. Of most of them or --**  
 20 A. Well, I mean, if you know that the -- some of them, like I  
 21 showed you in Storyville is basically -- I mean, I'm not an  
 22 expert, but I would guess that is, I don't know how many, 30  
 23 feet tall or --  
 24 **Q. Okay. You don't --**  
 25 A. -- not even. So they want to go to 75 on that corner. So

Page 196

1 what that would do is it would set the tone for an entire  
 2 new feel of that row of buildings. Our urban village would  
 3 no longer be a residential urban village. It would be  
 4 really an extension of Lower Queen Anne or Uptown, and it  
 5 would destroy what we have worked for to create a balance of  
 6 urban residential.  
 7 And when Ed Murray decided to sever and denounce the  
 8 contributions of the Neighborhood Councils instead of trying  
 9 to work with them but dismissing their knowledge and their  
 10 skill and, you know, their institutional knowledge, he  
 11 reorganized us.  
 12 And I've been to over half a dozen of these HALA meetings.  
 13 And the one that I went to, which is the very first one,  
 14 "We're going to start something new that's going to be  
 15 inclusive." He divided us according to urban villages, and  
 16 they were very distinct categories as is indicated in some  
 17 of these things. There are still four distinct types of  
 18 urban villages.  
 19 Residential urban village was the lowest density. And  
 20 that is what we were categorized into being along with seven  
 21 other neighborhoods, residential urban village. By changing  
 22 the zoning, by adding this at 75 feet, it is a bait and  
 23 switch. It is -- it is that we are no longer what we said  
 24 you were going to be. "You're going to be something  
 25 different." So --

Page 213

1 **Q. And here you're talking about not just -- in your opinion**  
 2 **not just based on the existing to what could be built under**  
 3 **MHA but what could be built now as compared to what might be**  
 4 **built under MHA?**  
 5 A. Both.  
 6 **Q. So the LR1 to the LR1(M) comparison?**  
 7 A. Yeah.  
 8 **Q. Okay.**  
 9 A. Yeah, I mean, I understand the distinction.  
 10 **Q. Okay. And the distinction there I think you mentioned**  
 11 **density. What were the other ones? Differences that aren't**  
 12 **currently allowed.**  
 13 A. Let's see. Density was the main one and having -- yeah.  
 14 **Q. Okay, thank you.**  
 15 A. That's pretty much it.  
 16 **Q. I think those are all the questions I have, thank you.**  
 17 A. Okay, thank you.  
 18  
 19 **REDIRECT EXAMINATION**  
 20 BY MS. NEWMAN:  
 21 **Q. Just a quick question.**  
 22 A. Okay.  
 23 **Q. So looking at Exhibit 252, which is the urban village map**  
 24 **showing Queen Anne, Upper Queen Anne, and you talked about**  
 25 **the impacts of development within that urban village, are**

Page 214

1 **the impacts going to stop -- are they only -- is it only**  
 2 **going to impact that area, or will the impacts of that**  
 3 **development have adverse impacts outside of those black**  
 4 **lines into this Single Family area?**  
 5 A. Absolutely. Single Family zones are right up against our  
 6 urban village there.  
 7 **Q. Okay.**  
 8 A. And the impacts will be huge.  
 9 **Q. And are the photos that you show of these homes, even if**  
 10 **they're not right up against, do they give you a general**  
 11 **feel for the typical homes that are immediately or near --**  
 12 **adjacent to or near the urban village?**  
 13 A. Absolutely. Yeah, I mean, there -- that's it. Yep, it's  
 14 very residential, it's very family oriented and it's very  
 15 valued for that, open space, a lot of dogs, a lot of kids.  
 16 **Q. Okay. So even though these houses might be a little farther**  
 17 **away -- and also do you think -- is this whole area that you**  
 18 **can see, all of this gray going all the way north, is that**  
 19 **one big cohesive neighborhood?**  
 20 A. I would --  
 21 **Q. That kind of plays -- has a character that is all in sync?**  
 22 A. Oh, absolutely.  
 23 **Q. And so development of this middle part could impact the**  
 24 **entire area you think?**  
 25 A. Oh, absolutely.

Page 215

1 **Q. Okay.**  
 2 A. It would dramatically change the tone.  
 3 **Q. That's -- I have no further questions.**  
 4 HEARING EXAMINER: Thank you, Ms. Derr.  
 5 MS. NEWMAN: Oh, did I offer the PowerPoint as a --  
 6 HEARING EXAMINER: No, we've not done 254 yet.  
 7 MS. NEWMAN: Okay, I could offer that.  
 8 MR. KISIELIUS: No objection.  
 9 HEARING EXAMINER: 254 is admitted.  
 10 We have the next witness for appellants. We'll take a  
 11 break, though, and come back at 3:40.  
 12 (Break taken)  
 13 HEARING EXAMINER: All right, we'll continue with  
 14 appellants' next witness.  
 15 MS. NEWMAN: Okay. Appellants call Mira Latoszek.  
 16 HEARING EXAMINER: Have you testified yet in the hearing,  
 17 or have you just --  
 18 THE WITNESS: I have not testified.  
 19 HEARING EXAMINER: Okay. Please state your name and spell  
 20 it for the record.  
 21 THE WITNESS: My name is Mira Latoszek, M-I-R-A,  
 22 L-A-T-O-S-Z-E-K.  
 23 HEARING EXAMINER: And do your swear or affirm that the  
 24 testimony you'll provide in today's hearing will be the  
 25 truth?

Page 216

1 THE WITNESS: I do swear that, yes.  
 2 HEARING EXAMINER: Thank you.  
 3  
 4 **MIRA LATOSZEK: Witness hereIn, having first been.**  
 5 **duly sworn on oath, was examined**  
 6 **and testified as follows:**  
 7  
 8 **DIRECT EXAMINATION**  
 9 BY MS. NEWMAN:  
 10 **Q. Good afternoon.**  
 11 A. Good afternoon.  
 12 **Q. I'm Claudia Newman for the Appellants SCALE. Could you**  
 13 **provide us your address and what neighborhood you live in?**  
 14 A. Yes. My address is 2218 14th Avenue South, and that's in  
 15 North Beacon Hill.  
 16 **Q. And how long have you lived there?**  
 17 A. I've lived there since 2005, and then I've also lived in  
 18 other locations in North Beacon Hill for twenty-five years.  
 19 **Q. Okay. And are you familiar with the MHA proposal that's the**  
 20 **subject of this hearing?**  
 21 A. Yes, yes, I am.  
 22 **Q. And in fact, you -- you're representing one of the**  
 23 **appellants in this appeal?**  
 24 A. Yes.  
 25 **Q. Which group is that?**