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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:

SEATTLE MOBILITY COALITION

From a Determination of Nonsignificance issued
by the Seattle City Council

Hearing Examiner file:

W-18-013

**SEATTLE MOBILITY COALITION'S
IDENTIFICATION OF TESTIMONY**

At the hearing in this matter held on June 12, 2019, the Examiner required Seattle
Mobility Coalition (“Appellant”) to identify the testimony by City of Seattle (“City”) witnesses
to which proposed Exhibit 36 responds. A transcript of that testimony is attached.

Dated this 14th day of June, 2019.

MCCULLOUGH HILL LEARY, PS

s/ Courtney A. Kaylor

Courtney Kaylor, WSBA #27519
Attorneys for Appellant

1 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

2 The undersigned certifies that this is a true and correct transcription of portions of the audio
3 recording of the Hearing held on June 10, 2019 and June 12, 2019.

4 **Testimony of Ketil Freeman**

5 **Hearing Day 1, Part 4.**

6 **07:25**

7
8 Liza Anderson (LA): Did you hear Mr. Shook’s testimony that there would be a change
9 in density as a result of the adoption of this proposal?

10 Ketil Freeman (KF): I did. Well, I heard him say that based on his analysis there would
11 be a reduction in feasibility which could result in a developer choosing to develop a 5 over 2 type
12 of construction as opposed to a tower.

13
14 LA: OK. So do you believe that that would result in reduced density?

15 KF: Not necessarily.

16 LA: OK, and why not?

17
18 KF: It’s often the case that you can achieve similar densities or even greater densities in a
19 5 over 2 type of construction. Generally, what is developed in a tower, depending on the
20 development standards of the zone, is a product that is higher end, so it typically has more square
21 footage per unit, especially at the higher levels. Typically, there is a podium associated with
22 tower development, depending on where you’re developing in Seattle. Say in South Lake Union
23 there may be a 40-foot-tall podium and, as a consequence, the FAR – the allowable density of
24 that structure – may be very similar to the density that’s developed in a 5 over 2 product.
25
26 Generally, in a 5 over 2 product as well, you might see smaller units, so that also helps make up
27 the density difference.

1 LA: For the record, a 5 over 2 product is what?

2 KF: 5 floors of wood frame construction over a 2 floor concrete podium.

3 LA: And so in particular, you're referring to Exhibit 4 and 5 in Mr. Shook's exhibit? [. . .
4 .] Exhibit 5? Was it your testimony that you disagree with Mr. Shook's assessment that there
5 might be, or that there would be a impact to housing as a result of this proposal?
6

7 KF: I would disagree with the assessment that a reduction in feasibility may result in less
8 dense products being delivered by the market.

9 LA: Is there anything else that you would want to address with respect to Mr. Shook's
10 testimony?

11 KF: I think looking at both of these maps, some questions come to my mind. He's
12 identified a 12-story tower as a product that could be delivered in neighborhoods where 12-story
13 buildings cannot be constructed. I believe he also testified that this analysis does not incorporate
14 zoning.
15

16 LA: Where is an example of a neighborhood where a 12-story tower may be shown but
17 wasn't, is not allowed?
18

19 KF: Sure, so the West Seattle Junction appears to have a 12-story tower. Heights up to 12
20 stories are not permitted in that particular urban village. Another example here, let's see, another
21 example that comes to mind – looks like North Beacon Hill has got a 12-story tower close to the
22 light rail station. Heights up to 12 stories are not permitted in those zones either.
23

24 LA: So based on the testimony that you've heard today from Mr. Shook and Mr.
25 Swenson and Mr. Steirer, does it change your opinion that a DNS was properly issued?

26 KF: No.

27 LA: And why not? It's a very broad question.
28

1 KF: As I mentioned before, the analysis that would be necessary to try to quantify
2 housing impacts from this proposal is necessarily speculative. We don't know what a fee will be
3 at some point in the future. We don't know what market conditions may be like, so the analysis
4 that is suggested by Mr. Shook is not ripe at this point.
5

6 **Testimony of Andrew Bjorn**

7 **Hearing Day 2, Part 1**

8 **15:07**

9 Liza Anderson (LA): Did you hear [Shook's] testimony that in his opinion the proposal
10 would likely result in significant impacts to housing?
11

12 Andrew Bjorn (AB): I was present for that; I did hear that.

13 LA: And do you agree with that conclusion?

14 AB: I do not.

15 LA: Let's walk through the basis for why you do not agree with that conclusion. I'm
16 going to ask you to turn to [...] Exhibit 5. Did you have the opportunity to review this
17 document?
18

19 AB: I have.

20 LA: And do you – I guess Mr. Shook made some conclusions, reached some conclusions
21 in this document and do you agree with his conclusions?
22

23 AB: I do not.

24 **18:16**

25 LA: Certainly, he reached the conclusion that impact fees can limit housing supply. And
26 is that something, do you agree with that opinion?
27

28 AB: I do not.

1 LA: OK, and why not?

2 AB: One of the challenges, and this is reflected in the academic literature for this, is that
3 the examination of impact fees and their effects on the housing markets are not simply a matter
4 of evaluating the costs, but also evaluating the value of the amenities associated with impact
5 fees. To consider one and not consider the other would not be a thorough evaluation of the full
6 effects of the policy.
7

8 LA: And did you have the opportunity to review the literature cited in Mr. Shook's
9 report?

10 AB: I have.

11 LA: And Mr. Shook's testimony was that although the literature on the issue is
12 complicated, he came to a clear opinion that impact fees would impact housing. And in your
13 review of the literature, is that the same conclusion that you would reach?
14

15 AB: I would say that impact fees may have an effect on elements of the market.
16 However, I would disagree with the blanket assertion that impact fees will always have a
17 negative impact on the market, especially with respect to constraining supply. The - as
18 mentioned, the consideration of the benefits of the amenities derived from transportation
19 facilities that are able to be constructed as a result of impact fees are not considered in Mr.
20 Shook's testimony, but in the literature there is an extensive amount of discussion about this.
21 And in fact what is noted is that many of the price increases with impact fees are not associated
22 with the simple passing of costs from developers to renters or buyers with no associated benefit,
23 but instead an increase in the willingness to pay, of buyers or renters to live close to certain
24 amenities. So in this particular case, looking at, for example, increased transit accessibility,
25 increased access to cycling infrastructure, improved pedestrian infrastructure, all of these are
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1 valued in the market and all of these would be associated with a positive effect. In fact, many of
2 these benefits have been shown in the literature to result in property price increases regardless of
3 whether there's an impact fee or not.

4
5 **40:45**

6 LA: Alright now, I believe we've talked a little bit about Mr. Shook's conclusion that in
7 his opinion impact fees can limit housing, and I believe you've established that you don't agree
8 with that assessment, is that correct?

9 AB: That is.

10 LA: OK, and tell me, if I understand correctly, part of the basis for your opinion is that
11 Mr. Shook's testimony ignores the amenity value of these transportation projects, is that correct?
12

13 AB: That is.

14 LA: Ok, and are there other bases for reaching this conclusion?

15 AB: With respect to, I'm sorry?

16 LA: With respect to whether or not impact fees can limit housing supply. So one of the
17 basis that Mr. Shook did not appear to address was related to the amenity value of the
18 transportation project, I was asking if there were any other bases upon which - that served as a
19 basis for disagreement with Mr. Shook's conclusion.
20

21 AB: I think from the perspective of the literature, those summarize the main objections
22 that I would have to that. There are certainly objections to other parts of the statement that I
23 could go through.
24

25 LA: That would be great.
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1 45:47

2 LA: All right. And do you have any other thoughts – I guess I wanted to ask you to turn
3 to exhibits 4 and 5 of Exhibit 5, involving hex maps.

4 AB: I have this as exhibits 3 and 4. I don't seem to have an Exhibit 5.

6 46:54

7 LA: Exhibits 3 and 4, the hex maps, are what I'm referring to. Do you think there are any
8 other problems or concerns that you have with Mr. Shook's analysis, in particular with respect to
9 these exhibits 3 and 4?

10 AB: I have a few objections, some of which have been noted previously by other
11 witnesses. One is actually with Exhibit 1, which is on page 6. And this is a statement that looks
12 at how fees associate with housing financial feasibility. And the assertion that I would make here
13 is that according to the literature, it's not entirely clear that that break-even level is constant. If,
14 for example, the amenities associated with impact fees do provide additional value in the market
15 that renters and buyers are willing to pay for, this break-even level is not going to be constant
16 between the - what is listed here as current costs and increased fees.

18 LA: That's helpful.

19 AB: Thank you. With Exhibit 4, again, what had been mentioned previously was that as
20 stated in the note, highlighted is Seattle with the current fee structure including Mandatory
21 Housing Affordability fees introduced in South Lake Union, with the addition of transportation,
22 school, and park impact fees based on sample fees typically assessed by Puget Sound cities. So
23 in this particular case, the two bars that are associated with Seattle do not necessarily apply
24 consistently for development in Seattle. With Exhibit 4 on page 9, this – I have not seen the basis
25 for which this map was created, and I'm not sure of the calculations that went into this map, but
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1 there are certainly some concerns. First of which is the notion that there is a 20% reduction in
2 feasibility. This is a bit of a loaded statement, and I believe that Mr. Shook addressed this in his
3 testimony. However, this isn't even a statement by which you can say that there is a 20%
4 reduction in feasibility of potential projects. This is a 20% reduction in feasibility of the
5 individual colored hexes here. There is no consideration from what I can see of the potential
6 development sites that are located in these particular areas. Additionally, there's no consideration
7 for the underlying zoning in these locations, and what was mentioned in Mr. Freeman's
8 testimony on Monday was that for certain areas there is no way that a 12-story residential tower
9 would be allowed under current zoning. I for one live in Ballard, and I know that if a 12-story
10 apartment building were to go up in the area designated, it - there would be considerable
11 community opposition, I would believe. So what these lead me to believe is that this is not an
12 accurate statement to note specifically that this is a 20% reduction in feasibility, or in feasibility
13 of potential projects. However, what was also mentioned previously was that this is noting both
14 proposed MHA fees and regional average impact fees. This is not noting actual impact fees. This
15 is adding MHA fees on top of impact fees for a change in the base condition. So as was noted
16 previously, there's no clear statement that can be made from this about what the actual impacts
17 would be of a final program.
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21 LA: And in your opinion, would it be possible to come to a conclusion about the 20%
22 reduction due to fees at this point?

23 AB: While I believe that it's challenging to evaluate what the impacts would be, I can
24 state that given the parameters that are here, under these specific assumptions, I would state that
25 a 20% reduction in feasibility is an incorrect statement.
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1 LA: And could you assess a percentage reduction in feasibility in your experience at this
2 time?

3 AB: It would be possible to evaluate changes in feasibility on a property-by-property
4 basis for a specific proposal. However, there are a lot of challenges associated with this. Again,
5 as mentioned before, we're looking at both the costs and the amenities associated with those
6 costs, and it's not looking at current situations, it's looking at future scenarios and comparing
7 what would happen under an impact fee program versus what would not happen if an impact fee
8 program were not present, and the projects on the list were delayed or canceled as a result. So it's
9 certainly possible on a property-by-property basis to suggest, given certain assumptions, whether
10 a particular rise in amenity value and rise in costs would make a development project feasible or
11 not. On a broader scale like this, I would be very hesitant at this point to make any assumption
12 because it would be purely speculative and based on assumptions that may not come to pass with
13 the final impact fee program.
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16 **56:09**

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18 LA: Obviously you heard Mr. Shook's testimony that he believes there to be a likely
19 significant impact to housing, and I understood part of that testimony to be based on this 20%
20 reduction in feasibility due to fees. In your opinion, is a 20% reduction, or any percent reduction
21 in feasibility of a particular project, would it have a larger impact on housing generally?
22

23 AB: Let me see if I understand the question. So, if your question relates to whether the
24 current proposal would result in a 20% reduction in feasibility, and a corresponding decrease in
25 housing production, what I would state is that it is not entirely clear at this point. However, it is
26 entirely probable that an impact fee program can be developed that would have minimal to no
27 significant impact on both housing production and costs passed to the consumer. In that case, if
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1 there is a possibility at this point, I cannot state that there is a likelihood, or not, of future steps in
2 this process selecting a program that would have an impact or not. However, this particular
3 proposal does not in and of itself specifically indicate that there will be significant adverse
4 effects. At a later time, when code amendments are proposed, when a more detailed fee structure
5 can be developed, a more detailed evaluation of that can be provided, such that it can be clear as
6 to whether or not there are impacts. However, at this point, this particular proposal does not
7 require that, and in fact, what I would state is that the literature would suggest that there are
8 possibilities that would allow for improvements in value and even positive effects on both
9 amenities and on housing production.
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11 **1:13:00**

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13 LA: You provided some testimony about impacts or lack thereof on housing supply. And
14 you also provided some testimony about impacts to consumers, or renters. Let's go back and talk
15 a little bit about the impacts on the effects of housing supply. Is it fair to say that your conclusion
16 is that this proposal will not have a negative effect on housing supply?
17

18 AB: My testimony is that this proposal in and of itself is not going to have an impact on
19 housing prices or housing supply in that the source of the effects will be the final parameters of
20 an impact fee program. So at this stage, it is uncertain as to what those impacts would be, and it
21 would be highly speculative for me to make a statement about what may be in fact a political
22 decision that is made, or specific characteristics of the program that are determined by the city.
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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct to the best of my knowledge and belief.

3 DATED this 14th day of June, 2019 in Seattle, Washington.
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5
6 s/Lauren A. Verbanik
7 Lauren A. Verbanik, *Paralegal*
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