

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:)
SEATTLE MOBILITY COALITION,)
From a DNS issued by the) Cause No. W-18-013
Seattle City Council.)

HEARING - VOLUME III
Hearing Examiner Ryan Vancil Presiding
June 18, 2019

TRANSCRIBED BY: Reed Jackson Watkins
 Court-Approved Transcription
 206.624.3005

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

On Behalf of the Appellant:

COURTNEY ANNE KAYLOR

DAVID PAUL CARPMAN

McCullough Hill Leary PS

701 Fifth Avenue, Suite 6600

Seattle, Washington 98104-7006

On Behalf of the Department:

LIZA ANDERSON

Seattle City Attorney's Office

701 Fifth Avenue, Suite 2050

Seattle, Washington 98104-7097

I N D E X O F P R O C E E D I N G S

1		
2		
3		
4	JUNE 18, 2019, MORNING SESSION.....	405
5	DISCUSSION RE APPELLANT'S EXHIBIT NO. 36.....	405
6	TESTIMONY OF MORGAN SHOOK.....	414
7	MORNING RECESS.....	451
8	DEPARTMENT'S CASE IN REBUTTAL.....	452
9	TESTIMONY OF KETIL FREEMAN.....	452
10	TESTIMONY OF ANDREW BJORN.....	457
11	HEARING CONCLUDED.....	460
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

APPELLANT'S CASE ON REBUTTAL

MORGAN SHOOK

Direct Examination by Ms. Kaylor.....	414
Cross-Examination by Ms. Anderson.....	421
Redirect Examination by Ms. Kaylor.....	449

DEPARTMENT'S CASE ON REBUTTAL

KETIL FREEMAN

Direct Examination by Ms. Anderson.....	452
Cross-Examination by Ms. Kaylor.....	454
Redirect Examination by Ms. Anderson.....	455

ANDREW BJORN

Direct Examination by Ms. Anderson.....	457
Cross-Examination by Ms. Kaylor.....	460

E X H I B I T I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NUMBER	DESCRIPTION	MRKD/ADMTD
APPELLANT'S		
No. 36	Tables and charts regarding housing development feasibility with transportation impact fees...../.451

1 JUNE 18, 2019; MORNING SESSION

2 -o0o-

3
4 HEARING EXAMINER: All right. We're back on the
5 record June 18, 2019, for W-18-013. We're here for
6 rebuttal testimony from Seattle Mobility Coalition's
7 witness Morgan Shook, in association with what's been
8 marked as but not yet as admitted as Exhibit 36. There
9 will be an opportunity for response from the City as
10 well.

11 In preparation for today, the Appellant was asked to
12 identify City testimony that Mr. Shook's testimony is
13 being offered as a rebuttal to in order to identify the
14 scope of the rebuttal. And we did receive from
15 Appellant a transcript with excerpts.

16 Some of these -- and what I'm going to do is ask
17 Appellant, if you could highlight in these kind of
18 what -- because there's large sections and I'm not sure
19 what exactly is it rebuttal based on the statements of
20 counsel from our last time of hearing. And I can
21 certainly see, for example -- if you turn to the back,
22 there's 1:13:00. It indicates that the witness says:

23 "My testimony is that this proposal in and
24 of itself is not going to have an impact on
25 housing prices or housing supply in that

1 source of the effects that will be the final
2 parameters of an impact fee program."

3 So clearly what was identified by counsel is as
4 rebuttal. So if you could highlight along those lines
5 what these other sections are representing, so if
6 there's anything more than or in addition or simply
7 accumulative with that, it would be helpful.

8 MS. KAYLOR: Certainly. This is, for the record,
9 Courtney Kaylor. And there's some repetition in the
10 testimony that we have transcribed --

11 HEARING EXAMINER: Um-hum.

12 MS. KAYLOR: -- and so some of our testimony today
13 will respond with one response to a couple of different
14 statements here in the testimony. But it might make
15 sense, I guess, just for me to go through this in
16 order.

17 So initially, starting on page 2 of our transcript
18 submittal, initially there was some testimony that the
19 reduction in housing type would not result in a reduced
20 density because the testimony was that switching from a
21 tower to a 5-over-2 product would not necessarily
22 result in reduced density. And so both the exhibit and
23 the testimony will respond to that particular point.

24 Moving on to page 3, there was some testimony that
25 the previous exhibit showed a 12-story tower in some

1 areas where it would not be allowed by zoning, and so
2 this exhibit and the testimony will respond to that.

3 At the top of page 4 there's testimony that analysis
4 at this point would be speculative and the testimony
5 today will respond to that.

6 Moving on to Mr. Bjorn's testimony, also on page 4,
7 there was testimony that Mr. Bjorn disagreed, that the
8 proposal would result in significant impacts to
9 housing.

10 Beyond that there was disagreement with conclusions
11 made in -- generally in Exhibit 5, which was
12 Mr. Shook's memorandum. And further down on page 4,
13 testimony of disagreement with the conclusion that
14 impact fees can limit housing supply, and the testimony
15 will respond to that today

16 HEARING EXAMINER: Can I just ask you to pause for a
17 second. So I know we're looking at the issue of
18 whether the proposal itself, distinct from other fees,
19 for example, will have a significant impact or not.
20 And then what I see you've identified as well is this
21 5-over-2 issue on page 2 and then whether a specific
22 zone would or would not allow a 12-story structure.
23 And then you also highlighted the testimony by City
24 that the -- whether analysis at this point would be
25 speculative or not.

1 I didn't quite catch what the rebuttal is with regard
2 to Exhibit 5.

3 MS. KAYLOR: Okay. Let me just step back to --

4 HEARING EXAMINER: Is it different from those or is
5 it one of those categories?

6 MS. KAYLOR: Well, let me just step back first and
7 I'll answer your question in a moment.

8 But back to page 3, I think generally the criticism
9 was that -- the criticism was of the use of this
10 12-story tower example and the criticism was that the
11 development type that was shown as being reduced would
12 not be permitted by zoning. So generally whether the
13 proposal will reduce the density of development types
14 permitted by zoning is the question that we're
15 responding to.

16 HEARING EXAMINER: Um-hum.

17 MS. KAYLOR: With regard -- and so I think both --
18 then turning back to answer your question, on page 4 we
19 are responding, as you noted, to the statement that
20 analysis at this point is speculative, and then as well
21 generally to the conclusion at the bottom of page 4,
22 that is disagreement with Mr. Shook's testimony that
23 impact fees can limit housing supply. And, of course,
24 that's just a broader question that this testimony goes
25 to. And the next page is just for context.

1 On page 6, again for context, the bottom of page 6,
2 the testimony transitions into specific criticisms of
3 Mr. Shook's analysis, and then at the top of page 7,
4 into specific criticisms of his Exhibit 5.

5 And the middle of page 7 is a discussion of
6 essentially whether there is a significant impact on
7 feasibility as a result of the fees. Bottom of page 7
8 is the statement that the previous exhibit didn't break
9 out MHA fees from these transportation impact fees.

10 Top of page 8 I believe is a -- it's a little
11 unclear, but I believe a misreading of the 20 percent
12 figure, which -- and so this exhibit takes a bit of a
13 different tact to clarify any potential
14 misunderstanding that came out of how the impact was
15 depicted. A repeat of Mr. Freeman's testimony
16 regarding whether the 12-story tower would be allowed
17 or whether the development type shown as reduced would
18 be allowed by zoning.

19 At the top of page 9, again a kind of longer
20 discussion about whether analysis at this point is
21 speculative. And similar the bottom of page 9, top of
22 page 10. And then bottom of page 10, testimony that
23 the proposal in and of itself won't have an impact on
24 the housing prices or housing supply. So generally
25 this testimony responds to all of those points.

1 HEARING EXAMINER: Um-hum. So if I understand how
2 we're approaching this correctly, we -- all of those
3 points in this testimony is to be funneled through
4 Exhibit 36; is that correct?

5 We -- and here's what I want to make sure that we
6 clarify is that at hearing it was -- this exhibit was
7 essentially stalled out and it was really with regard
8 to that final issue of whether this proposal itself
9 would have significant impacts or not, because the
10 argument from City was and the concern from the Hearing
11 Examiner was that that's really a case-in-chief issue
12 that should have been brought at the early part.

13 Counsel from the Appellants has highlighted, "Well,
14 we're doing this in rebuttal, so we're going to do this
15 in rebuttal," and you highlighted where that is
16 rebuttal and you're bringing it for that purpose. And
17 we waited till today to come and hear that.

18 I'm also seeing other things that this exhibit was
19 addressing, other than that issue that we were coming
20 here today. If we're going through this exhibit, that
21 makes sense, but today wasn't just an opportunity to
22 continue rebuttal because we really had the opportunity
23 to address many of these things last week.

24 You didn't, if it was through Exhibit 36, because we
25 stopped you with that and said, "Let's come back next

1 week." So that's why I'm asking for the clarification.
2 We hear all of these issues are coming through
3 Exhibit 36 and I can certainly imagine that it would be
4 addressing multiple rebuttal issues.

5 MS. KAYLOR: Yes, that is correct.

6 HEARING EXAMINER: Okay. Great. I'm not going to
7 limit it then. We're going to go through Exhibit 36.
8 I'll certainly hear any objections around that, but
9 just at the outset I'm not limiting it.

10 MS. ANDERSON: Okay. I guess do I need to -- I feel
11 like I made the objection last week and I would
12 continue to make the objection again that this, you
13 know, rebuttal -- that I think this exhibit should have
14 come in through the Appellant's case in chief and
15 didn't.

16 And I guess are you requesting that I make specific
17 objections?

18 HEARING EXAMINER: Let's handle it this way. The
19 City made an objection last week that this exhibit
20 shouldn't come in because it's not really rebuttal,
21 essentially, if I -- is that a fair characterization?

22 MS. ANDERSON: Yes, that is a fair characterization.

23 HEARING EXAMINER: The Hearing Examiner almost agreed
24 but not quite, and I see that the Appellants made an
25 argument that this can be characterized as a rebuttal,

1 and so I'm overruling that objection.

2 That does not mean that when a new exhibit's coming
3 in and you have specific issues, I mean, they've
4 identified a bunch of stuff that they're going to go
5 through on this, that you're not prohibited from making
6 additional objections as issues arise. But I'm
7 allowing them to proceed for this purpose and not
8 stopping them based on the objection you made last
9 week.

10 MS. ANDERSON: Okay. And I guess a further objection
11 that I would make is that my understanding is we were
12 coming back for the narrow purpose of determining
13 whether or not this exhibit would be allowed; and then
14 if, in fact, it was allowed, Mr. Shook would be
15 addressing that exhibit specifically and wouldn't be in
16 essence rehashing testimony that could have come in
17 through the case in chief or that could have come in
18 through rebuttal --

19 HEARING EXAMINER: Um-hum, last week.

20 MS. ANDERSON: -- at the end of last week. So they
21 had their opportunity to put on rebuttal, and the only
22 outstanding issue that remained was whether or not this
23 exhibit was going to come in was my understanding.

24 MS. KAYLOR: And so this is Ms. Kaylor again. It
25 might make more sense to have objections as we go

1 through the exhibit. Our intent today is to have
2 Mr. Shook explain what the exhibit shows and explain
3 how it responds to specific testimony that came in
4 previously. And so our intent is to have all of his
5 testimony -- that all of his testimony relates to this
6 exhibit and simply explains what the exhibit shows and
7 why it's responsive, and I believe that addresses the
8 concern.

9 HEARING EXAMINER: I'm not sure it does. But I do
10 understand what the -- it sounds like there's a
11 difference of opinion on it. And I would overrule it
12 because I did -- I certainly was intending that we
13 would leave it open, not simply to see if the exhibit
14 would be admissible but so that testimony could address
15 the exhibit -- because we didn't address the exhibit,
16 it was stopped in its tracks last week -- so that there
17 would be an opportunity for us to come back and address
18 it this week. So there is the opportunity today to
19 speak to the exhibit.

20 I think the City's cautionary note with the exhibit
21 that they're raising -- or the objection that they're
22 raising about the narrow reason that we're here -- is
23 well taken and but that there was an opportunity not
24 just to simply come in and say is Exhibit 36 admissible
25 but, in fact, could speak to the exhibit. But that is

1 my expectation of what we're here for.

2 MS. ANDERSON: Okay. Thank you.

3 HEARING EXAMINER: Mr. Shook, you're still under oath
4 from last week.

5 THE WITNESS: I understand.

6

7 MORGAN SHOOK: Witness herein, having previously
8 been duly sworn on oath, was examined
9 and testified as follows:

10

11 D I R E C T E X A M I N A T I O N

12 BY MS. KAYLOR:

13 Q. Mr. Shook, we'll hand you a copy of what has been
14 marked Exhibit 36 and I will ask you to go through each
15 of its figures separately in a minute. But first, just
16 generally can you explain what Exhibit 36 is?

17 A. Thirty-six, Exhibit 36, are three figures all
18 looking -- responding to testimony regarding, one,
19 understanding this detail, this Figure 1, disentangling
20 the specific effect of impact fees separate from MHA on
21 development feasibility.

22 Figure 2 has two purposes. One, responds to sort of
23 claims of housing unit density by building prototype as
24 well as the basis for understanding declines in housing
25 density potential across areas of the city detailed in

1 Figure 3.

2 Q. All right. Thank you. So with that can you go into a
3 little bit more detail on what Figure 1 shows?

4 A. Um-hum. So Figure 1 shows basically the impact that
5 development fees broadly have on the financial
6 performance of a housing project. In this case we're
7 modeling a 200-unit mixed-use building in a kind of
8 typical podium stick frame construction that's common
9 throughout the region. And what we're saying here is
10 not that these fees aren't necessary, but just to try
11 to illustrate sort of the relative magnitude of effects
12 of different types of things.

13 And so on one side we have the revenues, basically
14 income coming off of rent, and so we're using the new
15 construction rent that is available in each one of
16 these jurisdictions. And then we're contrasting that
17 with the cost to (inaudible) that housing, leaving land
18 out of that equation but then normalizing to sort of
19 soft costs, hard costs, and then pulling out
20 development fees.

21 And what's highlighted in the dark blue for all of
22 those cities and for Seattle are the existing fee
23 arrangements. So those include permitting fees, any
24 applicable SEPA fees, any impact fees for those cities
25 not named Seattle. And then for the city of Seattle we

1 look at sort of the city without MHA, the city with
2 MHA, and the city with a transportation impact fee as
3 detailed in the sort of maximum defensible fee shown in
4 prior exhibits, roughly about \$5,000 per apartment
5 unit.

6 And what this shows is the decrease in financial
7 feasibility on a return on cost metric. So we've
8 obviously normalized to a world where there's no fees
9 and then look at the relative impact of that.

10 And so Figure 1 here shows Seattle historically, as
11 we kind of stated previously, typically had fairly low
12 fee environments. That has translated into more
13 housing production, and particularly in higher-density
14 housing unit perspective or housing unit types, even
15 when we control for market rents. And we know that
16 Seattle just has higher market rents than many of these
17 surrounding suburban communities throughout the region.

18 Then the top two lines pull apart the issue of what a
19 project would bear with MHA fees. And here the
20 assumption is the roughly about \$22 that is currently
21 being charged in the South Lake Union area for per
22 square foot and then the additional cost of a
23 transportation impact fee.

24 Q. And so looking at the label across the bottom,
25 "Percentage Points Change in Return on Cost," what does

1 this exhibit show the effect is of the transportation
2 impact fee?

3 A. Yeah. So return on costs is a typical measure
4 developers use when they evaluate sort of the financial
5 feasibility of projects. There are many different
6 measures, but this case it's appropriate to just kind
7 of look at that as sort of what the return to cost of
8 the project would be.

9 And what this shows is with transportation impact
10 fees, there's roughly about a 10 percentage -- a 10
11 basis point change in development feasibility
12 reduction, which itself doesn't tell you anything
13 absolute about a project. It just shows -- tells you
14 the relative change.

15 And 10 basis points, I would say probably pretty
16 meaningful in tighter or sort of average markets and
17 maybe not as meaningful in hotter housing markets as a
18 sort of, you know, does this really ultimately sort of
19 figure prominently in sort of my -- in one's
20 decision-making for deciding to be able to move forward
21 with a project or not.

22 Q. And so does -- yeah. Okay. Thank you.

23 A. Um-hum.

24 Q. Does that relate to your previous testimony that there
25 would be an impact at the margins?

1 A. Yes, it does.

2 Q. And we move on to Figure 2 and ask you to explain what
3 Figure 2 shows.

4 A. Yeah. So this responds to previous testimony that in
5 many cases a podium product could have a higher FAR or
6 housing unit density -- I can translate it simply --
7 than a tower, particularly as we were making the
8 argument that the impact fee at the margins can reduce
9 the type of housing that's built because of the
10 differences in housing construction types. And what
11 this does is normalize those comparisons to a similar
12 set of assumptions regarding sort of lot size and the
13 application of zoning.

14 I think Mr. Freeman testified that in many cases
15 podiums could have higher FARs than towers, and that
16 could be true in isolation and typically as an outlier.
17 But if you were actually to normalize on the same plot
18 of land and say if you could build a tower on this site
19 or a podium under Seattle land use laws, almost in most
20 cases, outside of maybe some weird configurations of
21 sites or applications of zones, almost consistently
22 you're going to get higher FARs in a taller, denser
23 building.

24 Q. And by "higher FAR" do you mean higher unit count?

25 A. Typically, yeah. So this chart here shows basically a

1 range of different kind of housing prototypes that are
2 allowed within various zones of the Seattle land use
3 code and quickly sort of just gives you orientation to
4 how tall that building is, how many units may be in
5 there on average, given sort of current average unit
6 sizes that are getting built in the region, and then
7 looking at a similar lot area to floor area ratio.

8 And so in this case we're looking at roughly half an
9 acre site, to normalize it, and then calculating the
10 floor area ratio off of that. And what we see here,
11 and it's a mixed-use tower, has an FAR of about 10 in
12 that scenario, all the way down to a stack flat
13 prototype 1, which is a three-story product that has a
14 floor area ratio of about 1.7.

15 Q. And then turning to Figure 3, can you explain what
16 Figure 3 shows?

17 A. Yeah. So this map responds to a contention that we
18 were showing a 20 percent reduction in housing units
19 built in a previous hex map, which I think is Exhibit 4
20 of Exhibit 5, if I recall it correctly.

21 HEARING EXAMINER: Yes.

22 THE WITNESS: And this map here shows these
23 prototypes that are broadly allowed within Seattle's
24 urban villages and centers and based on Seattle's sort
25 of growth strategy, a place that places where dense

1 housing is designed to be delivered in order to meet
2 its broader sort of GMA and growth goals around placing
3 people and employment in dense areas to limit their
4 sort of environmental and transportation costs on the
5 system.

6 And so what we've done here is take those prototypes
7 in Figure 2, which are broadly allowed in most of those
8 areas but not all of them, and then highlighted the
9 areas where those prototypes that are allowed have a
10 reduction in housing density. And for the most part,
11 those are reductions in various types of podium
12 products to stack flat products or stack flat products
13 to less than stack flat products.

14 There are a couple of areas in the South Lake Union
15 zone where it's a tower to a podium, but those towers
16 aren't allowed by code.

17 Q. (By Ms. Kaylor) And does this exhibit respond as well
18 to City witness testimony that you weren't looking at
19 MHA fees and impact --

20 A. Yes.

21 Q. -- preservation impact fees separately?

22 A. Yes, it does. This also sort of includes a world where
23 MHA fees are charged by their respective geographies
24 across the city and by housing prototype.

25 And the point here is, just to be clear about my

1 testimony here around the fee, is the inefficiency and
2 the effect it will have on sort of housing production
3 by changing the cost to produce housing units, and that
4 that impact, that margins will be wide as with respect
5 to sort of geography and with respect to City policy to
6 accommodate future housing growth.

7 Q. Thank you. So based on this analysis, do you believe
8 that the proposed transportation impact fee will have a
9 significant adverse impact on housing production and
10 affordability itself?

11 A. Yes. And I would say not just this analysis but
12 inclusive of my previous testimony in understanding of
13 the issues.

14 MS. KAYLOR: Thank you.

15 HEARING EXAMINER: Cross?

16 MS. ANDERSON: Thank you. All right.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. ANDERSON:

20 Q. Mr. Shook, I would like to ask you some questions about
21 Figure 1. So if I understand this figure correctly, is
22 the -- what is the impact of the actual transportation
23 impact fee according to this chart? Is it a little
24 over --

25 A. On the return on cost basis --

1 Q. Uh-huh.

2 A. -- it's roughly of I think about 11 1/2 basis points.

3 Q. Okay. I don't see any discussion about basis points,
4 but I do see --

5 A. Oh, sorry.

6 Q. -- a percentage point change.

7 A. Percentage point change. So in financial terms, basis
8 points are typically expressed as hundredths of a
9 percent.

10 Q. Okay.

11 A. So -- so what we would say is .10 would be ten basis
12 points.

13 Q. Okay. So the impact of the transportation impact fee
14 in this chart would be a little over .1 percentage
15 point --

16 A. .11, yeah.

17 Q. .11 --

18 A. Percent, yep.

19 Q. -- percent point change --

20 A. Correct.

21 Q. -- in return on cost?

22 A. Yes.

23 Q. Okay. And did I understand your testimony correctly
24 that you were assuming that the transportation impact
25 fee would be \$5,000?

1 A. Yes, that's my assumption.

2 Q. Okay.

3 A. Or I think it's 47-ish in the exhibit from Fehr &
4 Peers.

5 Q. Okay. \$4700?

6 A. Per dwelling unit.

7 Q. Per dwelling unit.

8 A. Yeah. I think it's in urban -- the urban center
9 designation on for apartments. If I had this exhibit,
10 I could pull out the specific number, but it's in
11 there.

12 Q. Okay. And did you also indicate that you included some
13 other transportation impact fees in that analysis?

14 A. So for every city below Seattle, it looks at their
15 development fees, utility hookup fees, any applicable
16 City SEPA fees, as well as any impact fees that are
17 charged.

18 Q. Yeah, I'm sorry. I wasn't clear about that. I'm not
19 asking about the other cities, I'm asking you about the
20 City of Seattle.

21 A. Um-hum.

22 Q. Did you indicate that you included transportation
23 impact fees in South Lake Union?

24 A. I don't think so.

25 Q. Oh. That was not your testimony? Okay. Then I

1 misunderstood.

2 A. Well, I don't -- let me stop. I don't think I
3 understand your question.

4 Q. I guess I'm just trying to understand what fees you
5 included in your analysis here on Figure 1 when you
6 identify --

7 A. Which line are you speaking of?

8 Q. "Seattle MHA Plus Transportation Impact Fees."

9 A. Yeah. So for that line we were assuming the
10 development fees that are charged in the City. So that
11 isn't -- when I say "development fees," I'm speaking
12 inclusive of any permitting, any SEPA requirements, as
13 well as all utility hookup fees. So that would be the
14 line type, the third row down, Seattle, basically a
15 world of maybe a couple years ago, right, where you had
16 the cost to entitle and get your project hooked up to
17 the existing system. That would -- those are those
18 fees. And then --

19 Q. Okay. And let me stop you --

20 A. Okay. Sure.

21 Q. -- before you move on.

22 A. Sure.

23 Q. Okay. So when you say "a couple of years ago," what --
24 could you give me a year?

25 A. I would say this is data from 2018.

1 Q. Data from 2018. Okay. And when you say "SEPA fees,"
2 are you referring to SEPA mitigation fees?

3 A. Correct.

4 Q. Okay. And so what did you assume for SEPA mitigation
5 fees in this analysis?

6 A. I think the specific one we're assuming here is a SEPA
7 transportation mitigation fee that's applied in South
8 Lake Union typically, yeah.

9 Q. Okay. Okay. Thank you. That is what I was hoping
10 for.

11 And then I'd like to ask you to look at the top line
12 here, "Seattle MHA Plus Transportation Impact Fees" --

13 A. Um-hum.

14 Q. -- and make sure I understand what was included in that
15 analysis. Do I understand that you included \$5,000 of
16 transportation impact fees, your assumption was
17 approximately 500,000 -- or \$5,000 -- per apartment
18 unit for the cost of transportation impact fees?

19 A. Yeah. So everything in the Seattle line, the third
20 line down, is included in both the top two lines.

21 Q. Um-hum.

22 A. And the second line simply just has the additional MHA
23 piece, and then top line simply just has the
24 transportation impact fee plus the MHA.

25 Q. Okay.

1 A. So just those two things are added specifically in
2 those two lines.

3 Q. Okay. And in the Seattle MHA line, what was your
4 assumption about what the MHA fee would be?

5 A. It was the \$21 and change price.

6 Q. And \$21, help me understand what that -- where that
7 number comes from.

8 A. I believe that's the current price or at the time was
9 being charged in South Lake Union for additional
10 building capacity to accommodate a project like this.

11 Q. \$21 per unit?

12 A. Per square foot.

13 Q. Per square foot. Okay. So you did not include the
14 fees set out in the code for certain -- it looks like
15 certain heights?

16 A. (No audible response.)

17 Q. Okay. So is it your testimony that the MHA payment is
18 \$21?

19 A. That was my understanding at the time, yeah.

20 Q. Okay.

21 A. With the information was collected.

22 Q. Okay. All right. So you also -- I'm also trying to
23 still understand this exhibit. Did I understand your
24 testimony that you made the assumption that this is a
25 200-unit building for purposes of analyzing what the

1 fees would be?

2 A. Yeah. This is just an abstraction of sort of -- to
3 sort of normalize across different areas of a mixed-use
4 podium housing project.

5 Q. Okay. It's an abstraction of -- could you say that
6 again? It's an abstraction of normalizing --

7 A. So we're trying to isolate the -- this chart is trying
8 to isolate the fact of the transportation impact fee --

9 Q. Yep.

10 A. -- by controlling for rents and different -- across
11 different cities, right? And there are obviously
12 changes in margins, at the margins for all of these
13 things, right, in terms of if you could build it or not
14 and what site it would be happening on. So it's not
15 modeling a specific 200-unit project in every single
16 city on a specific site. We're just saying broadly if
17 you're trying to build this with a similar set of
18 costs, can we isolate the specific costs of a
19 transportation impact fee.

20 And so that increment there of the roughly 12 basis
21 points is trying to isolate the effect of the
22 transportation -- of a transportation impact fee in
23 Seattle.

24 Q. Okay. Okay. And let's see. Okay. All right. I
25 apologize, I've got my notes everywhere here.

1 All right. So -- okay. So is it fair to say that a
2 fee would be one factor that might be considered by a
3 developer in deciding whether or not to construct
4 housing or not?

5 A. Certainly true.

6 Q. Okay. And what other factors might be considered?

7 MS. KAYLOR: I think this goes outside the scope of
8 this witness' testimony on direct, specifically
9 isolated to this exhibit.

10 MS. ANDERSON: I don't think it does. I think he
11 testified that this is -- he combined many factors. In
12 this I was trying to understand what all was included.
13 And his testimony was, I believe, that this is one of
14 several factors. He just said it again. So I'm trying
15 to make sure I understand what these other factors are.
16 In fact, I wrote, "There are many measures and this is
17 only one factor," so I'm trying to understand what
18 other factors might be considered.

19 HEARING EXAMINER: Overruled.

20 THE WITNESS: Yeah. So if I understand the question
21 here is what other factor -- what factors -- this is a
22 measure and what other measures could developers use?

23 Q. (By Ms. Anderson) Not -- I guess what other factors
24 would developers consider in deciding --

25 A. Using a return on cost measure?

1 Q. Yes.

2 A. Yeah. So obviously we're trying to control for those
3 pieces by using kind of prices that are there. So
4 that's a kind of proxy for what's happening in the
5 broader economy with respect to people's willingness to
6 pay for housing in these different markets.

7 There are obviously construction costs, right? Wood
8 frame, concrete, steel, typical elements of the cost
9 we're trying to control for by using a similar
10 prototype to keep that issue separate. There are cost
11 to obviously design and engineer from our -- and, you
12 know, other attendant sort of financial or legal costs
13 that are part of that, we're trying to control for that
14 by using similar -- using the same assumptions across
15 those pieces. And then we're trying to leave the issue
16 of land availability out of it by not expressly putting
17 land into that, so that we can isolate the specific
18 effect here around transportation impact fees and not
19 confound that with other important variables.

20 Q. Okay. But isn't it fair to say that the cost of land
21 is a very significant factor in determining whether or
22 not to develop something?

23 A. Oh, certainly.

24 Q. Yes. Okay. And so this isn't an individualized
25 analysis of any particular development. This is just

1 a -- you extrapolated this; is that correct?

2 A. Yeah. It's not like a specific site, but it is what I
3 would call a reasonable representation of projects that
4 get built in the region.

5 Q. Okay. And can you tell me when -- what were the impact
6 fees that you were using for these other surrounding
7 cities? What your --

8 A. It was based on charges, depending on the specific
9 city, of the suite of impact fees that they are using
10 or charging, so ranging from transportation, parks,
11 fire, and school impact fees if they have them. So
12 if -- so it's a catalog of that normalized to what is
13 charged on a dwelling unit basis.

14 Q. So you're saying that you -- for example, we're looking
15 at Federal Way. Does that include -- is that only
16 transportation impact fees?

17 A. That's transportation, school, parks, and fire if they
18 have it.

19 Q. Okay. And is that --

20 A. I can't remember specifically which ones, but I know
21 they have transportation and school ones and I think
22 parks as well.

23 Q. Okay. So you're not exactly sure which fees are
24 included in that?

25 A. I would have to look it up which fees specifically for

1 each jurisdiction are included.

2 Q. Okay. And when did you obtain these numbers? I guess
3 when were these numbers drawn from?

4 A. We do typically annual surveys of fees, and so this is
5 based on a survey of fees that we did in I think early
6 2018.

7 Q. Early 2018. So would that have been fees from 2017?

8 A. It depends on when the jurisdiction would have updated
9 it, but yeah. They're on different cycles potentially
10 and obviously in different arrangements when they --
11 when they choose to sort of update their fees or move
12 with new fees or such.

13 Q. Okay.

14 A. Yeah.

15 Q. Thank you. Okay. Okay. All right. I'm going to jump
16 to Figure 2 now. And do I understand this figure to
17 not include a particular zoning or height limit for a
18 particular area?

19 A. This is not looking at any specific area. It is
20 looking at these prototypes and that are consistent
21 with the land use code in different zones, depending on
22 if the zone allows it or not.

23 Q. Okay. So, for example, we've got stacked flat
24 prototype 1.

25 A. Um-hum.

1 Q. You're saying that's three floors?

2 A. Um-hum.

3 Q. And it's got 38 housing units?

4 A. Um-hum.

5 Q. How come you assumed 38 housing units as opposed to 30
6 housing units or 40 housing units?

7 A. Yeah. So we look at what the zone says in terms of
8 minimum lot size, lot coverage, any setbacks, right,
9 and then we basically in the math extrude an envelope
10 of the building. And then we roughly know common
11 areas, parking; if there's retail required, it would
12 have to be accommodated; and then the remaining space
13 can be dedicated to housing.

14 And so given those types of products, we know that
15 there's an average unit size that can fit within those
16 things, and that's how we get to the unit size. So the
17 remaining residential gross floor area, we simply
18 divide it by a gross residential, which typically
19 includes things like hallways and fire exits and such,
20 to get a unit count.

21 And obviously this is an approximation. You know,
22 there's obviously some variance around those numbers.

23 Q. Okay. So housing units could be more or less, could be
24 smaller or larger?

25 A. Yeah. But on average I would say that's reasonable, a

1 reasonable assumption.

2 Q. Okay. And the floor area ratio, what is that based
3 on?

4 A. So I think there can be confusion around floor area
5 ratio. In it's purest sense it's simply saying what is
6 your lot size and it says what is the floor area of the
7 structure that you built, right?

8 Q. So this is not floor area ratio as in what is allowed
9 under Seattle's code as floor area ratio. This is --

10 A. Well, I'll finish my statement. So jurisdictions then
11 take that number and say, from a zoning perspective,
12 some things can or will not count for as FAR, typically
13 done to either help incent or help achieve other design
14 or public policy goals.

15 And so, for example, some jurisdictions say, "Well,
16 we won't charge you" -- "We won't let parking be
17 chargeable for FAR" or maybe "We won't allow" -- "We
18 won't allow" -- "If you do affordable housing units,
19 that won't be chargeable for FAR." So it changes what
20 is, quote/unquote, FAR under the code versus what
21 simply is just the simple calculation of FAR. Does
22 that make sense?

23 Q. So your testimony is that what you've included in
24 Figure 2 is the simple area of FAR --

25 A. Yes.

1 Q. -- not what reflects -- what the code allows or
2 requires?

3 A. It could be different, it could be the same. I don't
4 know typically.

5 Q. Did you conduct the analysis as to whether or not it
6 was different or the same?

7 A. We didn't do it so depth that we looked at sort of what
8 was chargeable and what was not chargeable in terms of
9 FAR.

10 Q. Okay. All right. All right. All right. And now I'd
11 like to have you look at Exhibit 3.

12 HEARING EXAMINER: Figure 3?

13 MS. ANDERSON: Figure 3, yes. Thank you.

14 Q. (By Ms. Anderson) Let's see. Okay. So did I
15 understand your testimony to be that this map shows
16 where prototypes are allowed?

17 A. No.

18 Q. Okay. So I guess I understood your testimony to be
19 that you take the prototypes in Figure 2 and you put
20 those onto this map in Figure 3; is that correct?

21 A. Yes, that's roughly correct.

22 Q. Okay. And in analyzing the prototypes, did you -- did
23 you analyze, I guess -- strike that. Let me start
24 over.

25 All right. Do I understand correctly that Figure 3

1 identifies all housing prototypes, all five of these --
2 or all six of these housing prototypes are identified
3 on Map 3 -- Figure 3?

4 A. No. The map shows a reduction -- well, the map shows a
5 couple of things. So it shows the geographies of the
6 urban centers and the hub urban villages, both
7 employment based -- mixed-use ones and the residential
8 once.

9 Q. Um-hum.

10 A. Sorry. The urban villages, either hub or residential
11 village. And it shows in the hatch mark areas where a
12 more dense prototype, shown in Figure 2, declines as a
13 result of the additional cost to produce the housing
14 unit from the imposition of an impact fee,
15 transportation impact fee, to a less dense housing
16 prototype, a development prototype.

17 And so, for example, in some of those areas that you
18 see a mixed-use podium prototype 3, a seven-story,
19 roughly 98 units, stepping down to a mixed-use podium
20 prototype pro, six floors, 91 housing units. Or you
21 see maybe a mixed use prototype 1, going from five
22 floors and 60 units down to a stack flat prototype 2 of
23 four floors and 44 units. So --

24 Q. Okay. So can I stop you --

25 A. -- so we --

1 Q. -- for a second?

2 A. Sure.

3 Q. So this -- where is it shown that there's the mixed-use
4 podium prototype 3 that drops down to prototype 2? Can
5 you show me where on Figure 3 this is shown?

6 A. I can't remember specifically, but I think it's within
7 the Ballard, we see that in the Ballard, and then in
8 also the -- I can't remember the area, the residential
9 village in West Seattle I do recall in a couple of
10 places. But I don't have all of that information
11 specifically off my head, but we were looking at
12 basically those prototypes, that step down, and looking
13 at general conformance with allowance under City zone,
14 City zoning in those areas.

15 Q. Okay. So, for example, if we're looking at a drop down
16 from prototype 3 to prototype 2, mixed-use podium
17 prototype 3 to mixed-use podium prototype 2, it looks
18 like there is a potential difference in housing units
19 of seven; is that correct?

20 A. Correct.

21 Q. Okay. So your testimony is that, if I understand
22 correctly, that there would be a reduction in the most
23 feasible prototype --

24 A. Correct. Yeah, so --

25 Q. -- by 20 percent; is that accurate? No?

1 A. No, that's not accurate.

2 Q. Okay.

3 A. I should add so we're controlling again for prices, so
4 new construction rents for these types of denser
5 housing products across the city, and we're normalizing
6 obviously by not including land as well. So that's the
7 sort of language you use around "most feasible," right?
8 So in a world where we know those differentials with
9 respect to land and acquisition.

10 But if we understand the housing unit production
11 issue being with respect to how are we changing the
12 viability of building housing in the dense areas that
13 we are trying to put housing in, that are well-served
14 by infrastructure and transit and alignment with the
15 Seattle growth strategy within urban centers and urban
16 villages, we see that we are declining the ability to
17 deliver those housing units. And we see that as being
18 fairly broad at the margins.

19 So obviously every project is going to be effected.
20 Some of them won't have this sort of issue at the
21 margin of stepping down to a lower housing density
22 type, but that's what this map is trying to articulate
23 is isolate the effect of just the transportation impact
24 fee and show the relative declines across those areas
25 in the city by controlling for those things we can

1 control for.

2 Q. And so it wouldn't be possible to say that there's a
3 certain percentage that would change from -- that would
4 drop down from one prototype type to another?

5 A. Not with any specificity in terms of specific units.
6 We'd have to understand the supply conditions. But at
7 a policy level, I think we understand sort of the
8 direction and rough magnitude of those effects.

9 Q. Okay. And so I want to make sure I understand. You
10 didn't factor in land cost into this analysis, correct?

11 A. That's correct.

12 Q. All right. And you didn't factor in acquisition
13 cost?

14 A. Which is separate from land costs?

15 Q. Yes. Are there other costs that might be included?

16 A. Well, what -- acquisition of what I guess? I'm --

17 Q. Of a particular property.

18 A. And that's separate from acquiring land?

19 Q. Yes.

20 A. I guess I don't understand the question.

21 Q. Okay. Maybe there isn't a difference.

22 A. I would understand that question as basically referring
23 to acquiring land.

24 Q. Okay.

25 A. Okay.

1 Q. All right. So it didn't consider the acquisition of
2 land, the cost of land. All right. I would --

3 A. I would say it does, it does consider it. But because
4 of the variance and we're trying to normalize it to
5 zero so that we can expressly look at the impact of a
6 transportation impact fee and not confound that with
7 the impact of differentials of land price.

8 Q. But land cost is always a factor, isn't it?

9 A. Certainly.

10 Q. Okay. All right. Now, I want to look at the mixed-use
11 tower prototype 1.

12 A. Um-hum.

13 Q. I believe I understood your testimony to be that none
14 of these areas in the map identify the mixed-use tower
15 prototype 1; is that correct?

16 A. The specific prototype issue is not -- which prototype
17 step down is not identified in the map because of the
18 complexity of showing that in a map exhibit.

19 Q. Um-hum.

20 A. But I would say looking at the underlying data for
21 this, almost all of it, outside of the ones I just
22 talked about, the tower, we're looking at podiums
23 stepping down to smaller podiums, and then smaller
24 podiums stepping down to stacked flats.

25 Q. I guess I want to understand your testimony and I had

1 written down here that your prior testimony was that
2 the mixed-use tower prototype, that it was not
3 reflected in Figure 3. Did I misunderstand your
4 testimony?

5 A. Yeah. I guess I don't understand your question.

6 Q. I --

7 A. The prototypes on Figure 2 are the basis for the map in
8 Figure 3. So we're looking at these prototypes across
9 the urban villages and urban centers --

10 Q. Um-hum.

11 A. -- in broad conformance to the allowable zoning in
12 those areas. So does that make sense? So these
13 projects are generally allowed within some area of
14 those urban centers and the zones.

15 HEARING EXAMINER: Does the underlying data that
16 shows a step down include mixed-use tower prototype 1
17 step down to any other -- to a podium?

18 THE WITNESS: Oh, mixed-use tower prototype 1? Yes.
19 In the South Lake Union area would be the one place.
20 But I think it also shows a podium going down to a
21 lesser dense podium as well.

22 HEARING EXAMINER: Is that counsel's question?

23 MS. ANDERSON: Part of my question.

24 Q. (By Ms. Anderson) Did I understand correctly that the
25 South Lake Union does not -- the zoning doesn't allow

1 for a 12-story --

2 A. Yes.

3 Q. -- tower --

4 A. Yes, that's my --

5 Q. -- prototype; is that correct?

6 A. Yes, that's my understanding.

7 Q. Okay. So you're identifying as mixed-use tower

8 prototype 1 in South Lake Union area, but this is an

9 area that does not allow a 12-story tower?

10 A. No. So what is showing here is we're looking at all of

11 those prototypes in every area --

12 Q. Right.

13 A. -- and then we're cross-walking back to the zoning to

14 see if it's allowed, and then seeing if, from an

15 allowed perspective, do we see a decline in those

16 allowed uses.

17 And so I would say -- so the analysis is looking at a

18 tower almost everywhere. But then we're saying, okay,

19 well, we know towers aren't allowed everywhere, and so

20 but are we then seeing a decline in the allowed

21 densities of products, and that's what's shown in the

22 hash marks.

23 So hash marks are showing -- is our analysis to say

24 these prototypes are generally allowed in those areas

25 under existing zoning and we're seeing a decline in the

1 most feasible type. And that varies depending on sort
2 of what zone it is or which urban village or urban
3 center it is.

4 Q. Okay. So I think we've established mixed-use tower
5 prototype 1, not allowed in West Seattle?

6 A. That's my understanding.

7 Q. Okay. Mixed-use tower prototype 1 not allowed in -- I
8 guess where is this? -- not allowed in Ballard?

9 A. My understanding.

10 Q. Okay. Mixed-use tower prototype 1 also not allowed in
11 South Lake Union?

12 A. That's my understanding.

13 Q. Okay. Thank you. All right. Now, under Figure 3,
14 what is the percentage return that is necessary for
15 feasibility?

16 A. Can you -- I'm not sure I understand that question.
17 For what?

18 Q. What are you -- under Figure 1, what are you return --
19 what are you assuming is the percentage return
20 necessary for something to be feasible? So you're
21 saying there's a reduction in the most feasible
22 prototype. What is the percentage return that you're
23 assuming is necessary for something to be feasible or
24 not feasible?

25 A. So on the financial side, is that the question?

1 Q. Yes.

2 A. Okay. So those performas have expectations on sort of
3 loan amounts, so what the construction loan and
4 permanent financing would be like. So we're using
5 current market rates for that, I can't remember the
6 exact number, but say roughly 5. We're using similar
7 sort of cap rates, understanding of the valuation of
8 the projects, so those were consistent across. And
9 we're using fairly recent market data about what these
10 projects would be capitalized at, as well as
11 expectations for return on equity based on sort of
12 current market rates and we're keeping that consistent
13 across the prototypes.

14 Q. And what is your assumption?

15 A. I can't recall specifically, but generally they're in
16 the sort of low teens to mid teens.

17 Q. The return on equity is -- your assumption is low teens
18 to mid teens. Okay. So that would be 11 percent to 15
19 percent --

20 A. I wouldn't hazard -- I can't recall off the top of my
21 head specifically what that very specific assumption is
22 in our modeling. But we are (inaudible) to keep all of
23 those variables consistent across our -- to not sort of
24 mix and match different assumptions for the prototypes,
25 because we're trying to isolate the effect of the

1 impact fee and not some variance with respect to, you
2 know, cost of capital or cost of debt.

3 Q. All right. I want to jump back, and I'm sorry that I'm
4 jumping all over the place, but I'm jumping back to
5 Figure 1 just briefly. I think just Figure 1.

6 All right. And so is it your understanding that the
7 City's MHA program established tiered performance and
8 in-lieu fees?

9 A. Yes, my understanding.

10 Q. Okay. And are those fees reflected in this Figure 1?

11 A. No. As I stated earlier, we're just looking at one
12 specific example of that.

13 Q. Okay. And the specific example that you were looking
14 at was?

15 A. I think our assumption was looking at the fees charged
16 in South Lake Union.

17 Q. Okay. And that was the \$21 per square --

18 A. That was my recollection, yeah.

19 Q. Okay. And is it your understanding that the actual
20 adopted MHA program adopted lesser fees than that?

21 A. I can't recall. I mean, when we pulled the
22 information, it was really 2018, and so the -- I don't
23 know if we've updated it since the adoption of MHA, but
24 at that time.

25 Q. So you pulled this information in early 2018?

1 A. Yeah, that's what I said.

2 Q. Okay.

3 A. On the MHA fee side.

4 Q. Okay. All right. And that was, of course, before MHA
5 was actually adopted?

6 A. (No audible response.)

7 Q. Right. Okay. All right. Is that also true for the
8 analysis that you conducted in Exhibit 5?

9 A. Oh. For which part of Exhibit 5?

10 Q. I'm thinking back to your report.

11 A. Yeah. We would have been using those same numbers to
12 the extent we were using that -- in that hex map, I
13 think Figure -- Exhibit 4 --

14 Q. Yep.

15 A. -- of Exhibit 5.

16 Q. Yep.

17 A. Yeah.

18 Q. Okay. Thank you. All right. And so is it fair to say
19 that your conclusion about housing impacts did not
20 consider what was -- what the MHA in-lieu fees for a
21 given area are?

22 A. For any given area, no, because that is established
23 policy. They're looking at that and I'm examining --
24 just I'm not trying to examine what the impact MHA has,
25 looking at the impact a transportation impact fee has.

1 So that's -- so I -- you know, in the area where there
2 are different fees, it would be a different change in
3 the -- on for Figure 1 of this exhibit, you would see
4 differential performance with respect to what any of
5 those fees would be.

6 But what we're trying here is -- I mean, even to me
7 line 2 doesn't really matter too much. It's really
8 line 2 can move one way or the other. Line 3 -- it's
9 the delta that's established in the top line that looks
10 at the effect of the transportation impact fee.

11 Q. Okay.

12 A. So it would be 12 basis points on a given project of
13 the same size with different fee in-lieu arrangements.

14 Q. And in Figure 1 did you incorporate any amenity value
15 of transportation facilities that would be supported by
16 an impact fee?

17 A. It is my contention that the fee -- what we know about
18 the fee method and pricing is going to lead to sort of
19 relative inefficiencies on top of sort of when the fee
20 is collected and when the facilities may be improved.
21 So we are not changing our rent assumption in terms of
22 what the market would bear and willingness to pay, so
23 that's held consistent in both cases.

24 Q. Okay. So the answer is no, you're not incorporating --

25 A. That's correct.

1 Q. -- an amenity value?

2 A. That's correct.

3 Q. And what are you -- what is your assumption about what
4 the rent increase would be to offset the difference of
5 an impact fee? Are you making any assumption about
6 that?

7 A. (No audible response.)

8 Q. No. So you're assuming there will not be any increase
9 in rent?

10 A. Well, I haven't done that analysis. But for this
11 analysis, we're holding it similar.

12 Q. When you say "for this analysis," you're referring to
13 Figure 1?

14 A. Figure 1.

15 Q. Okay. And when you say you're "holding it similar,"
16 meaning you're not --

17 A. It's the same, same prices being charged, yeah.

18 Q. Okay. Okay. So all right. And then -- I think we've
19 already done that.

20 So with this comparison between other cities, are
21 impact fees the only determinant of feasibility? Have
22 you identified other cities on Figure 1?

23 A. Sorry. There are two questions there. Have I
24 identified other cities or have I identified --

25 Q. No, no. I'm asking you to look at the other cities --

1 A. Yeah.

2 Q. -- that you've identified in Figure 1 --

3 A. Um-hum.

4 Q. -- and I'm asking you, with the comparison between
5 other cities --

6 A. Yeah.

7 Q. -- are impact fees the only determinant of feasibility?

8 A. No. As I said earlier, right, there are many different
9 pieces. And what this part is trying to do is to look
10 at Seattle in the context of the rest of the region
11 with respect to sort of the change.

12 Well, it's doing two things. Well, one, it's looking
13 at specifically the impact fee on the top line. But
14 then also with respect to the fees as a percent of --
15 you know, as an impact on development feasibility and
16 return on costs with those other areas.

17 But again like, remember, we're holding land
18 consistent, we're varying price, we're holding
19 construction costs consistent.

20 MS. ANDERSON: Okay. All right. One quick moment.

21 Okay. I have no other questions.

22 HEARING EXAMINER: Thank you.

23 Redirect?

24 / / /

25 / / /

1 R E D I R E C T E X A M I N A T I O N

2 BY MS. KAYLOR:

3 Q. Looking at Figure 1, there were some questions about
4 MHA fee, could be higher or lower. If the MHA fee were
5 higher or lower, would that affect this roughly 12
6 percent -- 12 basis point increment that's attributable
7 to the transportation impact fee?

8 A. No.

9 Q. There was some discussion of the mixed-use tower
10 prototype 1. And looking at Figure 3, the
11 cross-hatched areas, do those represent areas where a
12 housing type allowed, generally allowed by zoning, is
13 rendered infeasible?

14 A. That's correct. It steps down into a lesser-feasible
15 or a lesser-dense housing prototype.

16 Q. And then following up on the questions regarding
17 amenity value, is an adjustment for amenity value
18 warranted based on the fee methodology specified in the
19 Comprehensive Plan Amendment before us today?

20 A. I don't believe it is.

21 Q. And why not?

22 A. As I said before, I think, you know, for a project to
23 be efficient -- or for a fee to be efficient, we have
24 to start with identifying the impact that new users
25 have on the system and that necessitate a project that

1 actually mitigates that impact and then to apportion
2 that fee fairly and equitably.

3 And obviously there are sort of periphery challenges
4 with the impact fees just because of when those fees
5 are typically collected in advance of -- even if a
6 project were sort of identified, it could be years
7 between when the fee is collected and when the money is
8 actually spent.

9 And then obviously you have sort of the dislocation
10 of sort of who those users are, right? So over maybe a
11 life of the project it's good, but in the early term
12 maybe those users who are paying that premium or who
13 would be forced to pay that premium would not sort of
14 actually be users of those facilities.

15 But those are sort of I would say more peripheral
16 issues. But the bigger issue here is really about, you
17 know, what I understand to be the methods to assign
18 costs or sort of identify costs and projects and assign
19 those to projects across the city.

20 Q. And is that understanding based on your reading of the
21 language of the Comprehensive Plan?

22 A. It is. Of the amendment, yes.

23 MS. KAYLOR: Thank you. No other questions.

24 HEARING EXAMINER: Thank you, Mr. Shook.

25 THE WITNESS: Thank you.

1 HEARING EXAMINER: Anything from the City?

2 MS. ANDERSON: I would request that we take a break
3 so I can confer and then come back. I don't -- I'm not
4 sure. I don't think so. But would you -- would you be
5 willing to take a break and come back in ten minutes
6 and then we give you an answer?

7 MS. KAYLOR: And, Mr. Examiner, before we break, I've
8 been reminded that I have not requested the admission
9 of this document and I'd like to do that now.

10 HEARING EXAMINER: Um-hum.

11 MS. ANDERSON: I've noted my objection on the record
12 with Exhibit 36. I continue to have that objection but
13 nothing new.

14 HEARING EXAMINER: Okay. We'll admit the Exhibit 36.

15 (Appellant's Exhibit No. 36 admitted into evidence)

16 HEARING EXAMINER: And we will take a ten-minute
17 break, return at -- what is that? -- 10:20, not quite
18 ten minutes, and see if we have additional...

19 MS. ANDERSON: Thank you very much.

20 (Recess)

21 HEARING EXAMINER: We're back on the record.

22 MS. ANDERSON: Thank you very much, Mr. Examiner. I
23 would like to briefly call Mr. Ketil Freeman and
24 Mr. Andrew Bjorn for a couple of narrow questions.

25 MR. BJORN: (Inaudible).

1 MS. ANDERSON: Not yet.

2 MR. BJORN: Okay.

3 MS. ANDERSON: No. Him first, then you.

4 HEARING EXAMINER: So, Mr. Freeman, you're still
5 under oath.

6 THE WITNESS: Understood.

7

8 KETIL FREEMAN: Witness herein, having previously
9 been duly sworn on oath, was examined
10 and testified as follows:

11

12 DEPARTMENT'S CASE IN REBUTTAL

13

14 D I R E C T E X A M I N A T I O N

15 BY MS. ANDERSON:

16 Q. Hi, Mr. Freeman. Did you hear Mr. Shook's testimony
17 related to the costs that are imposed by MHA?

18 A. I did.

19 Q. Okay. And is it your understanding -- I guess what is
20 your understanding about what the actual costs
21 associated with MHA are?

22 A. So I think Mr. Shook testified that he assumed about a
23 \$21 per square foot MHA fee in South Lake Union. In
24 fact, the fees in South Lake Union range from about \$7
25 per square foot up to about \$13 per square foot,

1 depending on the zone. So the fee used in his analysis
2 for the purposes of MHA was not accurate.

3 Q. Okay. And did you also hear Mr. Shook's testimony
4 about I guess -- I'm actually going to ask you to turn
5 to Exhibit 36, Figure 2, that identifies development
6 proforma prototypes. Did you have any concerns about
7 the prototypes that were identified here?

8 A. Well, we heard a fair amount of testimony about the
9 mixed-use tower prototype 1, which shows a floor area
10 ratio of 10.1. And I think Mr. Shook testified
11 correctly that the actual whatever the sort of maximum
12 FAR in a zone may be -- maximum floor area ratio in a
13 zone may be -- can be distinction from what is in a
14 final build product because there may be exemptions
15 depending on what a jurisdiction allows and also
16 depending on the zone.

17 As a practical matter, the maximum FAR of 10.1, which
18 I think is based on a South Lake Union prototype,
19 doesn't appear in very many places in the city. I
20 think there may be one other place where it might
21 appear is in the University district. Typically in
22 neighborhood commercial zones that have similar heights
23 that would allow development of towers up to 12 stories
24 tall, even 14 stories tall, the maximum FAR is 7.

25 Q. Okay. So --

1 A. So --

2 Q. -- do I understand that you believe this floor area
3 ratio for the mixed-use tower prototype 1 to be not
4 reflective of the actual FAR?

5 A. That's correct. And the number of housing units that
6 are assumed in his model might be significantly less
7 depending on what the zone would allow if the zone
8 allowed a 12-story tall building.

9 MS. ANDERSON: Okay. Okay. No more questions for
10 you.

11 HEARING EXAMINER: Thank you. I'm sorry, there's a
12 chance for cross.

13 THE WITNESS: Oh. Pardon me.

14 MS. ANDERSON: Yep.

15 THE WITNESS: Sorry about that. Sorry Courtney.

16 MS. KAYLOR: No problem. I just have one question.

17

18 C R O S S - E X A M I N A T I O N

19 BY MS. KAYLOR:

20 Q. With regard to MHA fees, they vary across the city
21 currently, do they not?

22 A. They do.

23 Q. And do they vary up to as much as about \$35 in some
24 areas per square foot?

25 A. It depends on the amount of increase that was provided

1 through the -- through an up sale. And it also depends
2 on whether or not an area is considered a high-, a
3 medium-, or a low-cost area. Downtown and South Lake
4 Union are treated somewhat differently.

5 You know, the -- generally speaking, the amount of
6 extra development capacity granted through MHA in
7 high-cost areas was the standard M-level bump, so there
8 wasn't multiple stories added. I think in that --

9 Q. And so my question was simply not --

10 A. Sure.

11 Q. I appreciate your explanation --

12 A. Um-hum.

13 Q. -- about MHA --

14 A. Yeah.

15 Q. -- but it's simply just isolated to the fees. Are the
16 fees as high as \$35 in some areas?

17 A. Yes, in some areas they are.

18 MS. KAYLOR: Okay. Thank you. And I don't have any
19 other questions.

20 HEARING EXAMINER: Any redirect?

21

22 R E D I R E C T E X A M I N A T I O N

23 BY MS. ANDERSON:

24 Q. Just wondering which areas would be the \$35 fee and
25 what are some of the other fees?

1 A. So the areas where there would be the highest fee --
2 and those are actually very few areas, I don't know the
3 percentage off the top of my head -- would be in
4 high-cost areas, so generally the areas around downtown
5 and South Lake Union, where a lot of additional
6 development capacity was granted through MHA.

7 And so that's I guess the answer to the first part of
8 your question. I actually forget the second part of
9 your question.

10 Q. Whether or not there were lower fees elsewhere, for
11 example, in some of the other less-developed areas.

12 A. Sure. Yeah. So in a low-cost area that we see just
13 the standard M-bump, the fee could be as low as \$7 per
14 square foot.

15 Q. Okay. And is that -- that's identified in the code,
16 which areas --

17 A. Yeah. Those are all in -- in -- in Title 23, in
18 Chapter 23.58C for MHAR, the Mandatory Housing
19 Affordability Residential program.

20 MS. ANDERSON: Okay. Thank you.

21 HEARING EXAMINER: Thank you.

22 Next witness?

23 MS. ANDERSON: Mr. Bjorn.

24 HEARING EXAMINER: Good morning. You're still under
25 oath from last time.

1 THE WITNESS: Yes.

2

3 ANDREW BJORN: Witness herein, having previously
4 been duly sworn on oath, was examined
5 and testified as follows:

6

7 D I R E C T E X A M I N A T I O N

8 BY MS. ANDERSON:

9 Q. Mr. Bjorn, did you hear Mr. Shook's testimony that in
10 his opinion -- or I guess he was assuming that there
11 would be somewhere between an 11 to 15 percent return
12 on equity in his assumption?

13 A. I did, yes.

14 Q. Okay. And would you, based on your experience, agree
15 that that's a reasonable percentage that should be
16 incorporated?

17 A. I do. There's often a range of risks in different
18 markets, but typically that's the number that's used,
19 yes.

20 Q. Okay. And do you believe it's -- you'd be able to
21 calculate the reduction in the most feasible prototype
22 based on that assumption?

23 A. If we had access to all of the assumptions that were
24 behind the calculation with Figure 3, then that
25 estimate of reduction in feasibility could be

1 made, yes.

2 But what I would state is that examining the
3 difference between the Seattle MHA and the Seattle MHA
4 plus transportation impact fee, bars in Figure 1, that
5 noting that a .11/.12 percent change in return on cost
6 is relatively small in relation to that and likely
7 pretty far below what you could likely identify with
8 precision, that the modeling that's typically done as
9 part of a proforma includes some development
10 assumptions. You can assume, for example, that there's
11 a single cap rate within the city, and there may not
12 be. You can assume that there may be, you know, ideal
13 lending rates, and they may change between developers.
14 So I think that that level of change is one that's
15 relatively small.

16 Q. And based on that change, that it's your opinion it's
17 relatively small, would that result, in your opinion,
18 in a significant impact to housing, supply and housing
19 affordability?

20 A. I think that it's specula- -- excuse me. I think that
21 it's speculative to include that as a final conclusion
22 without more information.

23 Q. And what types of more information do you think would
24 be necessary?

25 A. So typically if there is an understanding that some

1 uncertainty exists in a model, developing out a
2 sensitivity analysis to determine what the effects of
3 changing certain parameters would be on the final
4 conclusions can be important.

5 So looking at future development, for example,
6 examining how construction costs and rents may change
7 in the future can be important to determine whether or
8 not the conclusions that would be reached in Figure 3
9 would be correct or would be more based on the other
10 assumptions that were made and not necessarily only on
11 the imposition of an impact fee.

12 Q. So in your opinion is it reasonable to look at just one
13 factor, in this case fees, to reach a determination
14 about whether or not there would be a reduction in
15 housing?

16 A. I think that it's certainly possible to look at
17 individual factors. I think that in this case it is
18 unclear that this is such a significant factor that it
19 would have more than an extremely marginal impact. I
20 think that more information is needed and that's not
21 provided here.

22 MS. ANDERSON: Thank you. No further questions from
23 me.

24 HEARING EXAMINER: Cross?

25 / / /

1 C R O S S - E X A M I N A T I O N

2 BY MS. KAYLOR:

3 Q. Good morning.

4 A. Good morning.

5 Q. I believe the last time we talked, you said you had not
6 done independent analysis of the impacts of this
7 proposal on housing. Since then have you conducted
8 that independent analysis?

9 A. I have not.

10 MS. KAYLOR: Thank you. No further questions.

11 HEARING EXAMINER: Any redirect?

12 MS. ANDERSON: No.

13 HEARING EXAMINER: Thank you.

14 And that concludes our hearing. And closings due
15 first on July 19 and responses then on July 26th.

16 Anything else we need to resolve before we conclude?

17 All right. Thank you.

18 MS. KAYLOR: Thank you.

19 MS. ANDERSON: Thank you.

20 (June 18, 2019, hearing concluded)

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

In WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2019.

Bonnie Reed, CET