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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of
ESCALA OWNERS ASSOCIATION
from a decision issued by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner File:
MUP-19-031 (DD, DR, S, SU, W)

Department Reference:
3018037-LU

APPLICANT’S MOTION TO EXCLUDE

I. INTRODUCTION

Respondent Seattle Downtown Hotel & Residences, LLC (“Applicant”) requests that the Hearing Examiner issue an order excluding any testimony by Peter Steinbrueck that concerns the legislative intent of the Seattle City Council (“Council”) with regard to any ordinance, environmental document, or other matter at issue in this case, based on his personal experience as a Council member. Any such testimony is not admissible as evidence in this appeal and must be excluded. Applicant does not request a ruling on this motion prior to the hearing in this matter, but files this motion to put the parties on notice of its objection to any such testimony, and the legal basis for such objection.

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II. FACTS

Appellant Escala Owners Association (“Appellant”) submitted a Witness and Exhibit List on January 14, 2020, indicating that it intends to call Mr. Steinbrueck as a witness at the hearing in this matter. Mr. Steinbrueck is described in this document as a “past Seattle City Council member with particular knowledge about the history of City of Seattle land use policy” who “will testify as a lay witness or an expert witness about changes and new information about environmental impacts of” the project at issue in this case “that have occurred since the programmatic FEIS was published in 2005 for the ‘Downtown Seattle Height and Density Changes.’” Appellant’s Witness and Exhibit List, p. 3. Statements in Appellant’s papers suggest that Appellant may seek to introduce evidence or make legal arguments regarding the scope or intent of legislation and associated environmental documents considered or adopted by the Council in the past. *See, e.g.*, Appellant’s September 27, 2017 Comment Letter (identified as Exhibit 36 in Appellant’s Witness and Exhibit List), p. 5.

III. ISSUES

The issue raised in this motion is whether the Examiner should exclude any testimony by Mr. Steinbrueck that relies on his personal experience as a member of the Council to opine on legislative intent of the Council regarding any ordinance, environmental document, or other matter at issue in this case.

IV. AUTHORITY

A. Evidence may be excluded when it is irrelevant, unreliable, or immaterial.

“The Examiner may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.” Hearing Examiner Rules of Practice and Procedure, Rule 2.17(a).

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1 **B. Legislator testimony about legislative intent must be excluded.**

2 Appellant may argue that Mr. Steinbrueck's testimony regarding legislative intent or the
3 Council's understanding of adopted environmental documents is relevant because Mr.
4 Steinbrueck was a member of the Council from 1997 through 2007 and can testify regarding
5 Council actions during this time. This argument fails for at least two independent reasons.
6

7 First, it is impermissible to consider legislative history when construing a statute or
8 ordinance unless the provision at issue is ambiguous. *Lee's Drywall Co. v. Dep't of Labor &*
9 *Indus.*, 141 Wn. App. 859, 867, 173 P.3d 934 (2007); *Dep't of Ecology v. Campbell & Gwinn,*
10 *L.L.C.*, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002). Appellant has not demonstrated any provision of
11 the legislation relevant to this appeal is ambiguous, justifying resort to legislative history.
12 Therefore, any testimony by Mr. Steinbrueck regarding the legislative history of the City Code is
13 impermissible.
14

15 Second, assuming *arguendo* that an ambiguous provision implicates the question of the
16 Council's intent, Mr. Steinbrueck's testimony would still be inadmissible. The Washington State
17 Supreme Court has explicitly held the statements of particular members of the Council are
18 irrelevant in determining the legislative intent of the entire Council when enacting an ordinance.
19 For example, in *Convention Ctr. Coalition v. Seattle*, 107 Wn.2d 370, 730 P.2d 636 (1986), a
20 non-profit organization ("Coalition") challenged a Seattle housing preservation ordinance.
21 Among other things, the Coalition argued a conditional use permit granted under the ordinance
22 was unclear as to whether a previous ordinance supplemented the permit, and asserted that
23 conflicting statements made by Council members showed the permit was unclear. The court
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1 rejected this argument, holding “[t]he Coalition cannot rely upon the council members’
2 statements to show the Council’s intent. What may have been the intent of an individual
3 legislator may not have been the intent of the legislative body that passed the act.” 107 Wn.2d at
4 375 (citing *Johnson v. Continental West*, 99 Wn.2d 555, 560-61, 663 P.2d 482 (1983)); *see also*
5 *State v. Brayman*, 110 Wn.2d 183, 205, 751 P.2d 294 (1988) (“the comments of one senator and
6 two members of the public are insufficient to demonstrate that any such intent was a substantial
7 motivating factor in the Legislature’s enactment of the 1986 amendments”); *Woodsen v. State*, 95
8 Wn.2d 257, 623 P.2d 683 (1980) (“Legislative intent in passing a statute cannot be shown by
9 depositions and affidavits of individual state legislators”); *Pannell v. Thompson*, 91 Wn.2d 591,
10 598, 589 P.2d 1235 (1979) (“What one legislator may have believed does not establish that the
11 Legislature intended something contrary to its express declaration . . .”); *Spokane v. State*, 198
12 Wash. 682, 687, 89 P.2d 826 (1939) (reporting that the depositions and affidavits of legislators
13 were held inadmissible by the trial judge, and holding “the legislative intent in passing the statute
14 cannot be shown or proven in any such manner”).

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18 Mr. Steinbrueck’s testimony is irrelevant in discerning the Council’s intent in passing any
19 given ordinance or taking any other action because “[w]hat may have been the intent of an
20 individual legislator may not have been the intent of the legislative body.” *Convention Ctr.*
21 *Coalition*, 107 Wn.2d at 375. Therefore, Mr. Steinbrueck’s testimony is inadmissible and must
22 be excluded.
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V. RELIEF REQUESTED

The Applicant requests the Hearing Examiner to enter an order excluding the testimony of Peter Steinbrueck.

DATED this 24th day of January, 2020.

s/G. Richard Hill, WSBA #8806
s/Courtney A. Kaylor, WSBA #27519
s/David P. Carpman, WSBA #54753
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