

# **EXHIBIT E**

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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by  
  
SAVE THE MARKET ENTRANCE  
  
of Decisions Re Land Use Application  
for 103 Pike Street, Project 3028428-LU

NOTICE OF APPEAL

**I. APPELLANT INFORMATION**

**1. Appellant:**

Name: Save The Market Entrance.org  
Address: 1415 2<sup>nd</sup> Avenue, Unit 702, Seattle, WA 98101  
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In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: ☐ U.S. Mail ☐ Fax ☒ Email Attachment

**2. Authorized Representative:**

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In what format do you wish to receive documents from the Office of Hearing Examiner?

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## II. DECISION BEING APPEALED

1. Save the Market Entrance is appealing the Analysis and Decision of the Director of the Seattle Department of Construction and Inspections for Project Number 3028428-LU dated January 2, 2020. A copy of that decision is attached to this appeal. Save the Market Entrance is also appealing the Director's code interpretation that is required to be issued pursuant to SMC 23.88.020 in response to the request for code interpretation in the attached (and incorporated) letter from Donya Burns and Claudia Newman to the Director of SDCI (Jan. 16, 2020).
2. **Property address of decision being appealed:** 103 Pike Street., Seattle, Washington.
3. **Elements of decision being appealed. Check one or more as appropriate:**

<u>  X  </u> Adequacy of conditions	<u>  X  </u> Variance (Departures)
<u>  X  </u> Design Review and Departure	_____ Adequacy of EIS
_____ Conditional Use	<u>  X  </u> Interpretation (See SMC 23.88.020)
<u>  X  </u> EIS not required	_____ Short Plat
_____ Major Institution Master Plan	_____ Rezone
_____ Other (specify: )	

## III. APPEAL INFORMATION

### 1. What is your interest in this decision? (State how you are affected by it)

Marketview Place Associates has proposed to demolish the historic Hahn Building and build, in its place, a 14-story hotel building with two apartment units and restaurant, bar, and retail space at 103 Pike Street in downtown Seattle (the "1<sup>st</sup> & Pike Proposal").

Save the Market Entrance.org (STME) is a non-profit community action advocacy organization representing the interests of community members that is dedicated to preserving the quality of life and sense of place at the 1<sup>st</sup> and Pike entrance to the Pike Place Market. STME will be significantly and adversely impacted by the 1<sup>st</sup> & Pike Proposal. It's board members and constituents regularly and consistently visit, use, and enjoy the iconic entrance to the Pike Place Market. The 1<sup>st</sup> and Pike Proposal will destroy this culturally important intersection in Seattle. The new building will permanently and adversely alter the symmetry, scale, and aesthetic character of the four corners of the Pike Place Market entrance. The height, bulk, and scale of the proposal is inconsistent with the historic character of the intersection.

Board members of Save the Market Entrance live in and own property in the Newmark Tower, a residential tower that is immediately adjacent to and east of the 1<sup>st</sup> & Pike Proposal site. Their homes have windows that face the project site and, as a result, they will suffer adverse noise impacts,

1 privacy impacts, loss of light impacts, glare impacts, health impacts and other impacts of the new  
2 building that will impair their use and enjoyment of their property.

3 The Proposal will also cause significant adverse traffic and transportation impacts that will directly  
4 harm them. For example, the project will have significant adverse traffic circulation impacts in the  
5 immediate area on streets that Save the Market Entrance members drive and walk on regularly,  
6 including 1<sup>st</sup> Avenue, Pike Street, Union, the alley and more. This proposal will cause a significant  
7 increase in use of these roads and will create significant safety and congestion issues for drivers and  
8 pedestrians alike. The project will have significant adverse loading and access impacts as well as  
vehicular and pedestrian safety issues associated with the alley that runs from Pike to Union between  
1<sup>st</sup> and 2<sup>nd</sup> Avenues. The board members who drive in and near the alley, walk in and near the alley,  
and rely on trash service and other services that occur in the alley will be significantly and adversely  
affected by the proposal's impacts to the alley.

9 Overall, a decision in favor of Save the Market Entrance on the issues raised in this appeal would  
10 substantially eliminate or redress the injuries caused to them by the 1<sup>st</sup> & Pike Proposal.

11 **2. What are your objections to the decision? (List and describe what you believe to be the  
12 errors, omissions, or other problems with this decision.)**

13 a. **The Decision by the Director of SDCI to issue a Determination of Non-  
14 Significance (DNS) was made in violation of the State Environmental Policy Act  
15 (SEPA), ch. 43.21A, and state and local regulations implementing that law for the  
16 following reasons:**

17 i. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse aesthetic, loss of  
18 light/shadow, height/bulk/scale, and historic and cultural preservation impacts on the  
19 iconic entrance to the Pike Place Market and with other historic landmarks in the  
20 area. The 1<sup>st</sup> and Pike Proposal will remove the historic resource that is the Hahn  
21 Building and will destroy this culturally important intersection in Seattle by  
22 introducing an out-of-scale, modern, glass tower. The Hahn Building has been  
23 recently nominated for a landmark designation. The new building will permanently  
24 and adversely alter the symmetry, scale, and aesthetic character of the four corners  
of the Pike Place Market entrance. The design of the proposal and the height, bulk,  
and scale of the proposal is inconsistent with the historic and cultural character of  
the intersection. It will block morning light and warmth from Pike Place Market.  
These and other impacts will impact the quality of the cultural experience for  
millions of visitors who come to Pike Place Market every year. Comment letters and  
emails that have been submitted by the public, by organizations, and by STME (and  
its representatives and consultants) that are in the project file provide more details  
that describe these impacts.

25 ii. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse construction impacts  
26 on pedestrians, nearby residents, drivers, transit, cyclists, and tourists in the area.  
Windows and decks of the homes in the Newmark Tower directly face the project

1 site. Construction activity, creating noise and dust (including toxic materials) will be  
2 right outside of their windows where they live and will bar the use and enjoyment of  
3 their decks. The scaffolds will be just within a few feet of the building. Congestion  
4 and noise during construction, caused by cranes, excavators, and other trucks will  
5 cause traffic, noise, view, safety and other significant adverse impacts to the  
6 Newmark Tower residents, to tourists visiting the historic, tourist attraction of Pike  
7 Place Market, and to drivers and pedestrians using the area. Construction of the new  
8 building will have cumulative adverse impacts when considered in conjunction with  
9 other projects moving forward in the area, such as the Waterfront Design  
10 construction and other projects.

11 iii. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse traffic and  
12 transportation impacts, including pedestrian impacts, on the streets that are in the  
13 immediate vicinity of the project site and on the alley that runs between Pike and  
14 Union and 1<sup>st</sup> and Second Avenue. The new building will introduce increased traffic  
15 congestion, increased parking congestion, increased loading and unloading  
16 congestion, conflicts with City of Seattle plans, projects and uses in the area,  
17 conflicts and safety issues with pedestrians and cyclists in this location, and other  
18 impacts to these highly congested and heavily used streets. The waivers from code  
19 requirements will result in a loading berth design that will not work and that will  
20 have significant adverse impacts. The proposal for southbound alley traffic flow will  
21 create gridlock for alley users, deprive existing property owners of access to their  
22 own property, and endanger pedestrians. The Proposal will introduce major  
23 congestion, delay, and safety issues in the alley for emergency vehicles, solid waste  
24 pickup, delivery trucks, residents, pedestrians, other vehicles. The alley problems  
25 will have the effect of causing additional adverse traffic impacts on the streets in the  
26 immediate vicinity, including Pike and Union Streets, and 1<sup>st</sup> and 2<sup>nd</sup> Avenues. The  
proposal will create a pedestrian safety risk at the alley access points on Pike Street  
and Union Street. The new building will have cumulative adverse impacts when  
considered in conjunction with other projects moving forward in the area, such as  
the Pike Pine Renaissance project and the new streetcar line on 1<sup>st</sup> Avenue. Comment  
letters that have been submitted by the public and Appellant (its representatives and  
consultants) during the land use process provide many more details that describe  
these impacts.

iv. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse public facility (alley)  
impacts. As explained above in section iv, the Proposal will introduce major  
congestion, delay, and safety issues in the alley for emergency vehicles, solid waste  
pickup, delivery trucks, residents, pedestrians, other vehicle in the alley that runs  
between Pike and Union and 1st and Second Avenue.

v. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse noise impacts on the  
residents of the Newmark Tower. The proposal includes a rooftop bar that will create  
noise that will directly and significantly impact the residents who live immediately  
adjacent to and within earshot of the rooftop bar.

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- vi. The 1st & Pike Proposal will have probable significant adverse aesthetic, loss of light, light and glare, privacy, and height/bulk/scale impacts on the residents of the Newmark Tower. Seventy-seven westward facing units in addition to the 5<sup>th</sup> floor common areas for all residents of the 192-unit Newmark Tower will be impacted. The new building will be built within very close proximity to the existing residential units and common area in the Newmark Tower and will be designed in a manner that will cause significant impacts to those residents, including health impacts from loss of light.
  - vii. The 1<sup>st</sup> and Pike Proposal will have probable significant adverse impacts to public views. The westward facing view approaching the Pike Place Market will be significantly and adversely impacted by this modern glass tower blocking out light and sky. The eastward facing view from Pike Place Market will be adversely impacted by the large modern tower that will be replacing an historic two-story brick building.
  - viii. The 1<sup>st</sup> & Pike Proposal will have probable significant adverse impacts to trees on the project site. These trees will suffer harm or removal as a result of the construction of the new building.
  - ix. With respect to the assertions made above in sections i-viii, the Director of SDCI erred in concluding that there would be no significant adverse impacts with respect to each of these elements of the environment caused by the 1<sup>st</sup> and Pike Proposal. These impacts were not adequately disclosed, analyzed, or mitigated by SDCI. The City's regulations do not adequately address or mitigate these impacts. The mitigation proposed by the developer or required by SDCI did not lower the impacts below the threshold level of being significant. As one example, the loading dock management plan is not viable and will simply not be effective at mitigating the impacts to the alley.
  - x. The Director did not require or collect the necessary and adequate information upon which to make a determination on whether the 1<sup>st</sup> and Pike Proposal would have significant adverse impacts related to those elements of the environment that are identified in sections i-viii as is required by state and local SEPA regulations. Evidence will show that there are additional studies, facts, and other information that is relevant and necessary to the assessment impacts, that SDCI should have, but failed to consider.
  - xi. The Director erred in concluding that the Design Review Process resulted in sufficient review and mitigation of the height, bulk, and scale impacts of the proposal. The height, bulk, and scale of the proposal will cause significant adverse aesthetic and land use impacts. The design guidelines do not adequately address or mitigate the adverse impacts of the proposal. There was clear and convincing evidence that height, bulk, and scale impacts documented through environmental

review were not adequately mitigated by design review. Comment letters that have been submitted by the public and by Save the Market Entrance (and its representatives and consultants) during the land use process provide details that demonstrate and describe the height, bulk, and scale impacts of this proposal.

xii. SDCI erred in its exercise of its substantive authority under SEPA issues, including failure to adequately mitigate the significant adverse impacts described above pursuant to SMC 25.05.675 and other SEPA regulations. SDCI erred when it failed to consider and/or exercise its authority under those provisions to mitigate the proposal. SDCI failed to apply feasible mitigation that could be applied to this project as explicitly stated in SMC 25.05.675.

xiii. The Design Review decisions violated SEPA regulatory and case law requirements that disclosure and analysis of environmental impacts must occur before a decision maker commits to a particular course of action. SEPA review must inform decision makers and the public of environmental impacts and mitigation measures that would avoid or minimize those impacts of the proposal *before* decisions are made. In direct violation of law, the Design Review Board's decisions were not informed by SEPA. The Design Review Board improperly made decisions that locked in the design during the Design Review process before SEPA review was conducted. The Board's Recommendation unlawfully built momentum in favor of the facility without the benefit of environmental review in violation of SEPA. The Design Board's action also improperly limited the choice of alternatives before SEPA review was conducted.

b. **The Recommendation of the Design Review Board and the Director's Decision to approve that Recommendation were made in error and should be reversed for the following reasons:**

i. The 1<sup>st</sup> and Pike Proposal is inconsistent with the Downtown Design Guidelines A-1, B-1, B-2, B-3, C-1, and C-6 (including the sub-guidelines for each of these). Allowing a massive, out-of-scale building with no limits on this corner this will likely lead to more buildings like it in the area— thus, leading to a complete loss of the unique character of this iconic spot. The design of this proposal also does not adequately respond to the residential homes that are immediately adjacent and to the east of the new hotel. The Proposal does not respond to the neighborhood context, is out of scale, and does not respond to the crucial role that pedestrians play in the area. SDCI misapplied and misconstrued these Design Guidelines when it approved the Proposal. SDCI erred when it concluded that the decision and recommendation of the Design Review Board was consistent with the Design Guidelines. Comment letters and emails that have been submitted by the public, by organizations, and by STME (and its representatives and consultants) during the land use process provide many details that describe these impacts.

- 1           ii.   The Design Review Board decisions were made in error and were not fully informed  
2           because the Design Review process did not allow for meaningful public  
3           participation. The Design Review Board violated SMC 23.41.014 because the  
4           members of the Board did not review the written public comments that were  
5           submitted regarding design review issues.
- 6           iii.   The Design Review Board's decision was not informed by an analysis of impacts by  
7           the Historic Preservation Officer as was required by the Seattle Code.
- 8           iv.   The Design Review Board decisions were made in error because they were not  
9           informed by environmental review as is required by SEPA. As a matter of law,  
10          design review decisions should not have been made until after the SEPA process was  
11          completed. The Board's position that concerns with off-street parking, traffic, noise  
12          and other impacts are not part of Design Review process was error. These issues  
13          should have been disclosed and assessed via SEPA review before the Board made  
14          its decisions on the proposal.
- 15          v.   SDCI erred when it approved the Design Review Board recommendation because  
16          the recommendation conflicted with conditions and mitigation that should have been  
17          applied by SDCI pursuant to SEPA and because the recommendation itself violated  
18          SEPA as is explained in Section 2(a)(xiii).
- 19          c.   **The Land Use Code Interpretation by the Director of SDCI should be reversed  
20          to the extent that the Director's construction and application of SMC § 23.54.035  
21          and SMC § 23.54.040 were made in error.** Those sections should be construed as  
22          outlined in detail in the Request for Land Use Code Interpretation submitted to SDCI  
23          by Claudia Newman and Donya Burns on January 16, 2020. That Request is attached  
24          and incorporated into this appeal.
- 25          d.   Appellant STME incorporates by reference all of the issues presented in the Newmark  
26          Building Owners Association Notice of Appeal and Request for Interpretation  
27          regarding the 1<sup>st</sup> & Pike Proposal that was filed on January 16, 2020.

### 3.   Relief Requested.

Appellant requests that the Hearing Examiner reverse the Determination of Non-Significance that was issued by the Director of SDCI and remand the matter to SDCI for further analysis and mitigation as deemed necessary by the evidence presented at the hearing. To the extent that the evidence demonstrates that the Proposal will have probable significant adverse impacts, Appellant requests that the Examiner order that SDCI prepare an Environmental Impact Statement for the Proposal.

Appellant requests that the Hearing Examiner reverse the Design Review decision that was issued by the Director of SDCI and remand to the appropriate body (the Design Review Board or the



1 Director) for further analysis as deemed necessary by the evidence presented at the hearing and after  
2 proper SEPA review had been conducted.

3 Appellant requests that the Hearing Examiner reverse the conclusions made in the Land Use Code  
4 Interpretation and issue an order concluding that Appellant's interpretation is the proper construction  
and application of the code provisions at issue.

5 Appellant requests any and all additional relief that is necessary to address and alleviate the errors  
6 raised by the objections to the Decisions that are presented in Appellant's appeal.

7 Filed on behalf of SAVE THE MARKET ENTRANCE this 16<sup>th</sup> day of January, 2020.

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9  
10 By: 

Ruth Danner, President of Save the Market Entrance

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13 And by: 

Claudia M. Newman

14 BRICKLIN & NEWMAN, LLP

15 Representative of Save the Market Entrance  
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