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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

7 In the Matter of the Appeal of

8 **NEIGHBORS ENCOURAGING**  
9 **RESPONSIBLE DEVELOPMENT**

10 From a decision by the Director, Department of  
11 Planning and Development, regarding a Master  
Use Permit

**Hearing Examiner file:**  
**MUP-14-006**

**Department Reference:**  
3013303

**Motions in Limine, to Shorten Time, and for  
More Specific List of Exhibits**

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**Motion in Limine**

14 The Applicant moves in limine for an order excluding testimony and evidence relating to  
15 Type I decisions made by the Department.

16 At the prehearing conference, Appellant identified several issues that, in Appellant's  
17 view, merited an order of remand. It is Applicant's understanding that the Examiner determined  
18 that those issues were Type I master use permit matters over which she does not have  
19 jurisdiction. Nonetheless, to afford Appellant a chance to make a record, the Examiner afforded  
20 Appellant an opportunity to file, on or before September 19, 2014, a "motion for procedural  
21 requirements for the proposal..." See Corrected Order Amending Case Schedule and Continuing  
22 Hearing.  
23

24 Appellant's witness and exhibit lists were filed on September 15, 2014. In that  
25 document's last paragraph (the document's pages are not numbered), Appellant indicated that it  
26 would not file a motion on procedural requirements on September 19, 2014, as allowed by the  
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1 prehearing order. Instead, Appellant “will present its evidence and arguments for this at the  
2 hearing...”

3 Many of the exhibits identified by Appellant in its lists appear to be designed to address  
4 issues associated with Type I Master Use Permit decisions, rather than the Type II decisions that  
5 are currently on appeal to the Hearing Examiner.  
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7 As the Examiner knows, “Type I decisions are decisions made by the Director that are  
8 not appealable to the Hearing Examiner.” SMC 23.76.004. Hearing Examiner Rule 2.03  
9 provides that “[t]he Hearing Examiner has jurisdiction to hear and decide appeals... only as  
10 authorized by law.” Since SMC 23.76.004 provides that Type I decisions are not appealable to  
11 the Hearing Examiner, then the Hearing Examiner, under Rule 2.03, has no jurisdiction to  
12 consider them. Under Hearing Examiner Rule 3.02, the Examiner may dismiss the appeal  
13 without hearing when she determines “that it fails to state a claim for which the Hearing  
14 Examiner has jurisdiction to grant relief.”  
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16 The evidence and argument relating to Appellant’s continuing request for a remand on  
17 procedural grounds all pertain to Appellant’s Type I contentions. Since they are beyond the  
18 scope of the Hearing Examiner’s jurisdiction, it is respectfully requested that the Examiner issue  
19 an order in limine to the effect that evidence and argument relating to Type I decisions will be  
20 excluded at hearing.  
21

22 **Motion for More Specific List of Exhibits and to Shorten Time**

23 The Hearing Examiner’s prehearing order required the Appellant to file and serve its final  
24 witness and exhibit lists on the parties on or before September 15, 2014. Appellant timely filed  
25 its lists. However, several of the listed exhibits comprise literally hundreds of pages of  
26 documents each. Listing them provides no indication what exhibits Appellant will actually offer  
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1 at hearing, or for what purpose, and no basis for Applicant to know how to respond to them.

2 The exhibits to which Applicant refers are exhibits 1, 8, 20, and 23-27. Exhibit 1 is the  
3 entire MUP project file in this matter which includes hundreds of pages of material. Exhibit 8 is  
4 a King County Superior Court lawsuit file. Applicant understands this file also includes  
5 hundreds of pages of documents. Exhibit 20 constitutes the entire MUP project files for two  
6 other residential development projects. Each of these files, Applicant understands, also includes  
7 hundreds of pages of documents. Exhibits 22-27 constitute all of the discovery requested by  
8 Appellant and provided by DPD. This discovery comprises hundreds, if not thousands, of pages  
9 of documents.  
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11 The purpose of the requirement to provide witness and exhibit lists is to afford  
12 Respondents the opportunity to prepare their response to Appellant's claims. By seeing what  
13 exhibits will be offered, Respondents can understand Appellant's arguments, and be prepared to  
14 address them. However, the Exhibits listed in Appellant's Lists are essentially useless for this  
15 undertaking. Appellant has submitted a haystack of documents without providing a clue as to the  
16 location within them of any evidence supporting its appeal.  
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18 Accordingly, Applicant respectfully asks the Hearing Examiner for an order directing  
19 Appellant, on or before September 24, 2014, to list specifically by date, and other identifying  
20 features, each exhibit Appellant intends to offer, and to provide a specific copy of each exhibit.  
21 Applicant also asks that it be granted two days following this listing to submit its final witness  
22 and exhibit lists.  
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24 Given the short period prior to hearing in this matter, Applicant also respectfully asks the  
25 Examiner to enter an order shortening time for Appellant's response to this motion such that the  
26 response would be due on or before September 22, 2014.  
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1 Dated this 18<sup>th</sup> day of September, 2014.

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3 Respectfully submitted,

4 McCULLOUGH HILL LEARY, P.S.

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8 G. Richard Hill, WSBA 8806  
9 Attorneys for Applicant