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4 BEFORE THE CITY OF SEATTLE
5 OFFICE OF HEARING EXAMINER

6 NEIGHBORS ENCOURAGING REASONABLE
7 DEVELOPMENT,

8 Appellant,

9 v.

10 DIRECTOR, SEATTLE DEPARTMENT OF
11 PLANNING AND DEVELOPMENT, and

12 RADIM BLAZEJ,

13 Respondents.
14

Hearing Examiner File No. MUP-14-006

(DPD Application No. 3013303)

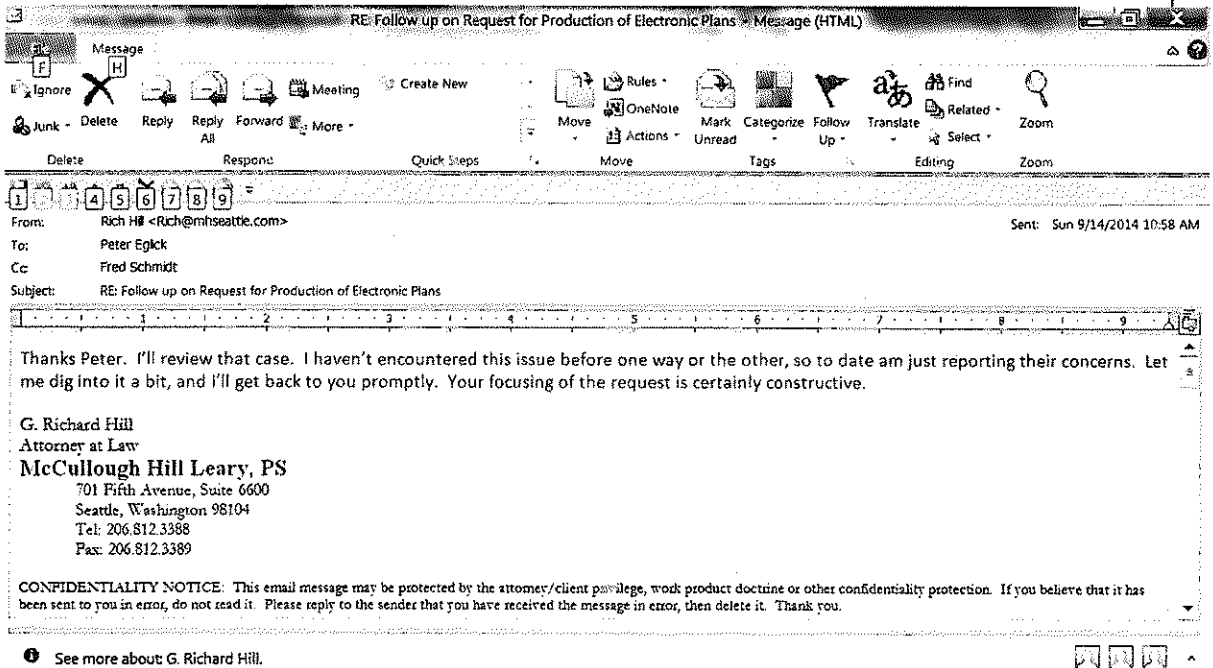
**APPELLANT'S OPPOSITION TO
APPLICANT'S MOTION FOR
PROTECTIVE ORDER**

15 Applicant claims in its Motion for Protective Order that Appellant is demanding
16 electronic copies of "each and every architectural drawing that was submitted to the City and
17 reviewed in connection with the Master Use Permit on appeal." See Motion at 1 line 26, line
18 20-21. That is simply not true. Appellant's original request asked for electronic plan copies
19 not realizing that it would create an issue. But, when Applicant raised concerns, to avoid
20 unnecessary debate and delay Appellant narrowed the request to just three plan sheets out of
21 literally dozens. This is shown in the Appellant counsel's September 12, 2014 4:53 PM e mail
22 attached to the Motion for Protective Order. What is not shown in Applicant's motion or
23 attachments is this response by Applicant's counsel after Appellant narrowed the request to
24 just three plan sheets:
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**APPELLANT'S OPPOSITION TO APPLICANT'S MOTION FOR
PROTECTIVE ORDER - 1 of 5**



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13 This acknowledgement that “Your focusing of the request is certainly constructive,”
14 omitted from the e mail string attached to Applicant’s motion, is also not mentioned in the
15 text of the Applicant’s Protective Order Motion. The Motion pretends that Appellant’s
16 narrowing of the request from dozens to three never occurred and pretends that Applicant’s
17 counsel never acknowledged that the narrowing in response to Applicant’s concerns was
18 helpful. The Motion instead calls the plans sheet request “unduly burdensome, harassing and
19 unnecessary,” pretending that dozens of electronic plan sheets are still requested.

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21 Even apart from this omission, the Applicant’s motion does not offer a basis for a
22 protective order. The Applicant’s concerns about the electronic plans request were articulated
23 by Applicant’s counsel in his September 11, 2014 3:09 PM e mail (part of the e mail string the
24 Applicant did provide). One concern was that the plans were protected by copyright. But
25 Lindberg v. Kitsap County, 133 Wn2d 729 (1997), brought to Applicant’s attention in
26

1 response (see e mail string), rejects copyright protection in a government proceeding context
2 as a basis for nonproduction. The fact that here electronic documents are requested makes no
3 difference.

4 The other concern expressed was that the project architects “are subject to professional
5 liability if someone uses their files, alters them, builds something, and damage ensues.” See
6 Applicant Counsel September 11, 2014 3:09 PM e mail. This concern is far-fetched,
7 particularly in this government proceeding context. In any event, Appellant has already
8 confirmed that it will not use the plans in that manner. See September 12, 2014 4:53 PM e
9 mail. Further, no explanation is given of how this concern is any different than a concern
10 about copying, use, alteration, etc. of paper plans. After all, the Motion for Protective Order
11 states, “There is no information on AutoCad [*sic*] that is not contained in the hard copies of
12 the documents.” Motion at 2 line 22-24.
13

14 The current Protective Order Motion repeats the September 11 concerns with no more
15 colorable support than when first articulated. Despite such statements as, “The Project
16 Architect indicates he would be severely prejudiced if required to produce these documents in
17 AutoCad [*sic*] form,” (Motion at 2 lines 6-7) none of the concerns attributed to the architect
18 are supported by declarations as required for such motions. Even the (irrelevant) assertion of a
19 copyright claim is not documented. It is also notable that the Applicant does not identify any
20 practical obstacles to readily producing electronic versions of the three requested sheets.
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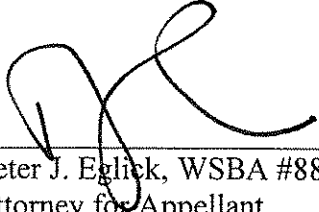
22 It is much more difficult and expensive to prepare a plan hearing exhibit (e.g. about a
23 project’s impact on a neighborhood) from a hard copy or PDF than from an electronic file.
24 That is why electronic plans have come into existence. And that is why they were requested
25
26

1 here so that Appellant could timely prepare illustrative exhibits. Applicant's resistance has
2 delayed this. Applicant's motion is without merit in this appeal and, if granted, would set an
3 adverse precedent for others. The motion should therefore be denied.

4 Respectfully submitted

5 Dated this 15 day of September, 2014.

6 EGLICK KIKER WHITED PLLC

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9 By 
10 Peter J. Eglick, WSBA #8809
11 Attorney for Appellant
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CERTIFICATE OF SERVICE

I, Kristen Doughty, an employee of Eglick Kiker Whited PLLC, declare that I am over the age of eighteen, not a party to this lawsuit and am competent to testify as to all matters herein.

On September 22, 2014, I caused to be delivered, a true and correct copy of the Appellant's Opposition to Applicant's Motion for Protective Order by e-mail to the following individuals:

Garry Papers
Department of Planning and Development
garry.papers@seattle.gov

G. Richard Hill
McCullough Hill Leary, P.S.
Rich@mhseattle.com

Bill Mills
Department of Planning and Development
William.mills@seattle.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: September 22, 2014 at Seattle, Washington.


Kristen Doughty

