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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of  
**NEIGHBORS ENCOURAGING  
RESPONSIBLE DEVELOPMENT**  
From a decision by the Director, Department of  
Planning and Development, regarding a Master  
Use Permit

**Hearing Examiner file:  
MUP-14-006**  
**Department Reference:  
3013303**  
**REPLY TO OPPOSITION RE  
PROTECTIVE ORDER MOTION**

**Reply to Opposition re Protective Order Motion**

NERD makes four points in its opposition to the motion for protective order.

First, NERD observes that it reduced its request from all of the digital files to three. This is not technically true. NERD asked for three files as a “start,” and reserves the right to expand the request “if it turns out additional files are needed.” Eglick email of 9/12/14, attached. In any event, whether the number of files being requested is three or a thousand and three, is not the point. The issue is not the number of sheets being requested, but the concerns of copyright, misuse, liability, and the likelihood in this case that the files will be used and manipulated to prepare exhibits without compensating the architect for his work product and without the architect having any control over his professional work product.

1 Second, NERD asserts that it might as well be given the AutoCad since it already has the  
2 hard and PDF copies. This is incorrect. Hard copies and pdf copies cannot be manipulated and  
3 misused the way that digital files are. It is like the difference between a Word document and a  
4 printed hard copy.

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6 Third, NERD complains that the motion is not supported by declarations. However, HER  
7 2.17 allows hearsay if the Examiner determines it is relevant to the issue on appeal, comes from  
8 a reliable source, and has probative value. NERD does not question that the project architect has  
9 these views or would testify to them. Indeed, it is commonly known that architects are reluctant  
10 to release their copyrighted digital files. These files are their livelihood. If the Examiner is  
11 concerned about the lack of declarations, Mr. Blazej, the project architect, will testify to these  
12 facts at a moment's notice.

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14 Fourth, NERD's final paragraph makes it clear what it wants: To use the architect's work  
15 product to make exhibits more easily than it could using the hard files and the pdf versions of the  
16 documents. This is a misuse of discovery. Discovery is to "obtain information which is relevant  
17 to the subject matter involved in the pending action." CR 26.

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19 Appropriately, NERD obtained copies of the City's files containing the plans for the  
20 Applicant's proposal, files that included both hard and pdf formats. Those files contained  
21 relevant information involved in this appeal.

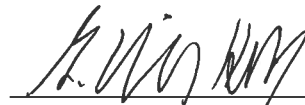
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23 On the other hand, it is wholly inappropriate for NERD to use the power of the Office of  
24 the Hearing Examiner to force the Project Architect to disgorge its copyrighted work product for  
25 the purpose of preparing a plan hearing exhibit more easily and cheaply, while providing no  
26 compensation for the architect who prepared the document.

1 Accordingly, the Applicant respectfully asks the Examiner to grant its motion for  
2 protective order. The request by NERD is "unnecessary under the circumstances of the appeal."  
3 HER 3.11.  
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7 Dated this 22<sup>nd</sup> day of September, 2014.  
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9 Respectfully submitted,

10 McCULLOUGH HILL LEARY, P.S.  
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14 G. Richard Hill, WSBA 8806  
15 Attorneys for Applicant  
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## Rich Hill

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**From:** Peter Eglick <eglick@ekwlaw.com>  
**Sent:** Friday, September 12, 2014 4:53 PM  
**To:** Rich Hill  
**Cc:** Fred Schmidt  
**Subject:** Follow up on Request for Production of Electronic Plans

**Importance:** High

The request was made to facilitate hearing preparation and hearing exhibits. The idea that there is a copyright interest that precludes production of plans, electronically or otherwise, as part of and for use in a hearing examiner appeal is news to me. See Lindberg v. Kitsap County, 133 Wn2d 729 (1997). In any event, no commercial use is proposed or intended. To try to focus this and perhaps allay concerns, please start by producing the electronic files for A3.02 (West elevations), A4.02 (N-S Section), and A0.08 (Perspectives). We can revisit the issue if it turns out additional files are needed.

Peter J. Eglick

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**From:** Rich Hill [mailto:Rich@mhseattle.com]  
**Sent:** Thursday, September 11, 2014 3:09 PM  
**To:** Peter Eglick  
**Cc:** radim@caronarchitecture.com; Scott Jeffries  
**Subject:** RE: Follow-up to yesterday's request

Thanks Peter. I forwarded your request to Radim and Scott.

In speaking with them, I learned that architects virtually never allow third parties to use their digital files. For example, DPD is given only paper and pdf versions of plans.

The reasons for this, they tell me, is that they are subject to professional liability if someone uses their files, alters them, builds something, and damage ensues. Also, since this is their professional work product, it would be possible with the digital files to make exhibits or other uses of the files without compensating the copyright owners.

So, for these reasons, they would resist your client's request for the files, particularly since hard copies of all the documents have been provided. If there are any you don't have, let us know.

With that said, they understand that your client may wish to use the files for purely benign purposes. So, perhaps you could let us know what they need and we can try to work out a way to address it.

G. Richard Hill