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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**

**NOTICE OF ADDITIONAL EXHIBIT TO
BE OFFERED**

Notice

The Applicant provides notice of an additional exhibit to be offered:

Letter dated August 6, 2014 from Joseph C. Finley to Diane Sugimura (attached).

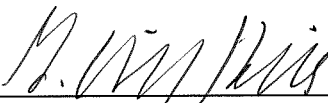
This letter, written by the attorney for the property owner, was submitted to the Director in response to NERD's inquiry about authorization. Two other letters were submitted in response and this was the only letter not included on NERD's exhibit list. It was not initially offered because Applicant had understood that this issue had been deemed beyond the jurisdiction of the Hearing Examiner at the time of the Prehearing Conference. As it seems, based on the Order on Motion in Limine, that this evidence might be considered after all, it will be important to have the property owner's views before the Examiner.

1 The Applicant advised NERD last Tuesday, one day after the date that its exhibit list was
2 due, of Applicant's intent to offer this exhibit.

3 Dated this 26th day of September, 2014.
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5
6 Respectfully submitted,

7 McCULLOUGH HILL LEARY, P.S.

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10 _____
11 G. Richard Hill, WSBA 8806
12 Attorneys for Applicant
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JOSEPH C. FINLEY

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August 6, 2014

Diane Sugimura, Director
City of Seattle
Department of Planning and Development
700 Fifth Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Via email (Diane.Sugimura@seattle.gov)

Re: DPD Application Nos. 3013303 and 3107787 (3078 SW Avalon Way); Request for Immediate Stay of Application Processing

Dear Director Sugimura:

The purpose of this letter is to comment on a letter that was sent to you by Mr. Peter Eglick as legal counsel for NERD, as defined in his letter to you dated July 30, 2014.

First of all, even though Mr. Eglick knew that I represent the owners of the affected properties at 3078 and 3084 SW Avalon Way he did not see fit to send a copy of his letter of July 30 to me or to the property owners.

Second, Mr. Eglick misstated the substance of my letter to Diane C. Davis at DPD.

He asserts in the next to last paragraph on page one of his letter that "The actual owners have confirmed through counsel that Northlake and Mr. Thorpe at best "had" a purchase and sale agreement on which they did not perform and which never closed."

That was an outright misrepresentation by Mr. Eglick. What I in fact communicated in

my letter to Diane Davis was that Northlake Group, LLC "had a contract to purchase the property from them but that has not occurred."

There is a very large difference between "never closed" and "has not occurred". And it is solely a matter between the parties to the contract (the owners and the buyer) as to whether a contract will be extended, reinstated or declared to be binding. At this point the owners reserve the right to pursue settlement discussions with the buyer without conceding whether the agreement between the parties is legally in force and binding. And it is none of the business of NERD or Mr. Eglick how that may be resolved.

With all due respect to Ms. Davis, she seems to have overlooked that there is another category that entitles someone other than the owner or the purchaser under a real estate contract to pursue a Master Use Permit. That category is "authorized agent" of the owner. You should understand that under Paragraph 7 of the first Addendum to the Real Estate Purchase and Sale Agreement that was entered into on October 18, 2011, Northlake Group, LLC was designated as an "authorized agent" of the owners for purposes of pursuing a Master Use Permit. Further, during this period of time when the owners and the buyer are having discussions about the effect and enforceability of the agreement, the owners can and do hereby confirm, for purposes of considering the Master Use Application, that Northlake Group, LLC continues to have the status of "authorized agent" whatever resolution the parties ultimately may reach with respect to the purchase contract.

It is manifestly contrary to public policy for the City to take action that possibly would preclude settlement of pending litigation, especially when no legitimate rights of third parties would be affected. The attempt by counsel for NERD is transparently an attempt to postpone and delay the Master Use Application from being heard on the merits when they do not properly have standing to raise the issue after the owners and the buyer consider and confirm (for purposes of the application) that buyer is a duly authorized agent of the owners.

The request of legal counsel for NERD for a stay of processing the application should be denied.

Very truly yours,



Joseph C. Finley

cc: Peter Eglick

Counsel for Northlake Group, LLC