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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE**

**ENDING THE PRISON INDUSTRIAL
COMPLEX (EPIC), ET AL**

Hearing Examiner File No.:
MUP-17-001

From a decision by the Director, Department
of Construction and Inspections, on a Master
Use Permit

DCI Project No. 3020845

**APPELLANTS’ MOTION TO STRIKE
KING COUNTY AND DONNELLY’S
“REPLY”**

The Appellants ask the Hearing Examiner to strike the “Reply” that King County and Donnelly filed on Friday, March 24, 2017. No Hearing Examiner Rule allows these two parties to file a reply to a motion that they did not file.

After spending many pages of briefing making hyper technical and incorrect arguments to the Hearing Examiner regarding the Seattle Municipal Code and Hearing Examiner Rules and complaining on multiple occasions that the Appellants have failed to comply with Hearing Examiner Rules, King County and Donnelly have hypocritically violated the plain language of HER 2.16(c).

The Appellants filed their motion for reconsideration on March 13. King County and Donnelly filed a response to this motion on March 20. As the moving party, the Appellants’ filed

1 their reply on Friday, March 24, 2017 after the Hearing Examiner granted them leave to do so
2 pursuant to HER 2.16(c). Without any authority, King County and Donnelly filed a “reply” as
3 well.

4 HER 2.16(c) reads in pertinent part:

5 (c) The Hearing Examiner may provide for the filing of a reply or other
6 additional briefing on a motion, and may call for oral argument prior to ruling.

7 HER 2.16(c). Black’s Law Dictionary defines “reply” as:

8 [A] reply is what the plaintiff, petitioner, or other person who has instituted a
9 proceeding says [i]n answer to the defendant's case...On trial or argument. When
a case is tried or argued in court, the speech or argu- ment of the plaintiff in
answer to that of the defendant is called his "reply." \

10 Black’s Law Dictionary – online legal dictionary 2nd Ed; *see also*, Ballantine’s Law Dictionary
11 (“Reply Brief – A brief filed by the appellant in response to the points made by the respondent”);
12 *Racetrac Petroleum v. J.J.'s Fast Stop*, 2003 WL 251318 (N.D. Tex. Feb. 3, 2003) (“the purpose
13 of a reply brief is to rebut the nonmovant's response”); *cf.* CR 7(a) (providing in part that “a court
14 may order a reply to an answer”).

15 Here, the Appellants moved the Hearing Examiner to reconsider her decision. The
16 Hearing Examiner then authorized the Appellants to file a reply to King County and Donnelly’s
17 response. No Hearing Examiner Rule allows the County and Donnelly, non-moving parties, to
18 file a reply. It must therefore be stricken. *Cf. State v. Thompson*, 2003 Wash. App. LEXIS
19 1499 *32 (July 14, 2003)(“This court has not authorized [litigant] to file a reply brief nor any of
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1 the addenda raising new issues that he has filed in connection with this appeal. We strike those
2 briefs and decline to consider the new issues raised therein.”¹

3 The Appellants respectfully request that the Hearing Examiner strike the reply brief filed
4 by the County and Donnelly. Should the Hearing Examiner deny this motion, the Appellants
5 request an opportunity to respond to the Respondents’ reply.

6
7 RESPECTFULLY SUBMITTED this 28th day of March, 2017.

8 Smith & Lowney, PLLC

9 By: ____/s Knoll Lowney_____

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22 _____
23 ¹ If the Hearing Examiner should deny this motion, then the Appellants are entitled to an opportunity to respond to King County and Donnelly’s “reply”.