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HEARING EXAMINER

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
WALLINGFORD COMMUNITY
COUNCIL, ET AL.

Hearing Examiner File:
W-17-006 through
W-17-014

Of Adequacy of FEIS Issued by the
Director, Office of Planning and
Community Development

JUNCTION NEIGHBORHOOD ORGANIZATION'S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO MHA FEIS'
FAILURE TO IDENTIFY INCONSISTENCIES
WITH COMPREHENSIVE PLAN AND PROPOSED
AMENDMENTS

The Junction Neighborhood Organization ("JuNO") submits this reply (the "Reply") in support of its Motion for Summary Judgment as to MHA EIS' Failure to Describe Inconsistencies with Comprehensive Plan and Proposed Amendments Thereto (the "Summary Judgment Motion").¹ This Reply is based upon the files and records herein, including the previously filed Declaration of Christine M. Tobin-Presser filed in support of the JuNO Motion (the "Tobin-Presser Declaration"),

¹ The Summary Judgment Motion is included in JuNO's May 1, 2018 (1) Response to City's Motion to Dismiss; (2) Cross Motion for Summary Judgment as to MHA FEIS' Failure to Consider Reasonable Alternatives and its Improper Attempts to Utilize Phased Review; and (2) Motion for Summary Judgment as to MHA EIS' Failure to Describe Inconsistencies with Comprehensive Plan and Proposed Amendments Thereto its Cross Motion for Summary Judgment as to MHA FEIS' Failure to Consider Reasonable Alternatives and its Improper Attempts to Utilize Phased Review (the "JuNO Motion"). Unless otherwise indicated, capitalized terms herein have the meaning identified in the JuNO Motion.

1 the May 10, 2018 Declaration of Geoffrey Wendtland filed in support of the City's Response to the
2 Summary Judgment Motion (the "Wendtlandt Declaration") and the Declaration of Christine M.
3 Tobin-Presser filed in support of this Reply (the "Tobin-Presser Reply Declaration").

4 The City's May 10, 2018 Response to Appellants' Motions for Summary Judgment (the "City
5 Response") purports to respond to arguments asserted by separate appellant Friends of Ravenna-
6 Cowen in a separate motion for summary judgment. JuNO's Reply confines itself to the arguments
7 actually made in the JuNO Motion and the City's responses to those arguments.

8 **A. The MHA DEIS Does Not Comply With WAC 197-11-440(6)(d)(i).**

9 WAC 197-11-440(6)(d)(i) requires the MHA EIS to incorporate, where appropriate, a
10 summary of the Comprehensive Plan and "how the proposal is . . . inconsistent" with the plan. Id.
11 (Emphasis added). The City's assertions that it complied with this requirement are easily disproved
12 and are undercut by its own pleadings.

13 **1. Failure to Identify Inconsistent Provisions.** The City Response illustrates the MHA
14 EIS' careful efforts to describe the Comprehensive Plan policies with which its Proposed Action is
15 consistent, specifically discussing the Comprehensive Plan's Land Use Policies 1.3, 1.4, 2.7, 7.3, 8.4
16 and 8.13, Land Use Goals 1 and 2, the Future Land Use Map and Growth Strategies 1.2, 1.12 and
17 1.13. City Response at III.B.1.

18 The MHA EIS' detailed discussion of consistent Comprehensive Plan provisions highlights the
19 City's failure to comply with its responsibility to also identify and summarize inconsistent provisions.
20 The MHA EIS devotes a total of three dismissive (and partially inaccurate) sentences, relegated to
21 Appendix F, to addressing the MHA EIS' inconsistencies with the Comprehensive Plan:

22 Several policies in individual urban villages contained in the Neighborhood Plan policies
23 section of the Comprehensive Plan may conflict with elements of the proposed action
concerning changes to single family zones within urban villages. Amendments to these

1 policies **are docketed** and the policies would be modified to remove potential inconsistencies.
2 The potential impacts of these policy amendments is considered in this EIS.

3 Tobin-Presser Decl., Ex. W at F.11 (emphasis added).

4 The City does not even bother to identify the individual neighborhoods,² or the specific
5 provisions of the Neighborhood Plans to which it alludes, let alone summarize how each is
6 inconsistent with the Proposed Action. In addition to single Junction Urban Village Neighborhood
7 Plan policy providing for maintaining single-family zoned areas, the City has long been aware that
8 MHA Proposal would conflict with many specific policies of the JuNO Neighborhood Plan and
9 presumably those of other neighborhoods. Tobin-Presser Decl., Ex. XX at Ex. QQ³

10 The MHA EIS further fails to advise that there are numerous Community Involvement Policies
11 within the Comprehensive Plan and outside of the individual Neighborhood Plans that are inconsistent
12 with the City's assertion that it will simply amend away years of neighborhood planning in order to
13 render its Proposed Action consistent. See, e.g., Tobin-Presser Decl., Ex. I.

14 The City unilaterally concludes that there is sufficient information scattered throughout the
15 MHA EIS, including maps containing new zoning designations and boundary expansions, to allow a
16 reader to understand how the Proposed Action and the undisclosed Comprehensive Plan amendments
17 would conflict with the existing Comprehensive Plan. City Response at 12:20-13:6. Without a
18 summary of the relevant conflicting provisions of the Comprehensive Plan, the MHA EIS does not

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20 ² See JuNO Motion at n. 1 (link to City's neighborhood planning website containing all of the
21 neighborhood plans). The nine Neighborhood Plans single-family policies are Aurora Licton at P-12; Fremont
at FP-13; Morgan at MJP-13; North Rainier at NR-P9; Wallingford at W-P1; Junction Urban Village at WSJ-
P13 and Westwood-Highland Park at W/HP-P18.

22 ³As noted in Paragraph 52 of the Tobin-Presser Declaration, all exhibits to Ex. XX can be found at the
23 following Dropbox link cited on the first page of the exhibit:
https://www.dropbox.com/sh/dmssces393tb4jz/AAA98ekcBZD1CHLU1SQO3_gHa?dl=0.

1 provide the information necessary to evaluate inconsistencies. Moreover, it is not the reader's duty to
2 mine the documents for inconsistencies, it is the City's duty to meaningfully summarize them
3 pursuant to WAC 197-11-440(6)(d)(i).

4 **2. City Doubles Down on Misstatement that its Proposed Amendments are**
5 **Docketed.** MHA EIS Appendix F, issued on November 9, 2017, erroneously states that
6 “[a]mendments to these [neighborhood planning] policies [that conflict with the Proposed Action] **are**
7 **docketed** and the policies would be modified to remove potential inconsistencies. The potential
8 impacts of these policy amendments is considered in this EIS.” *Id.* (emphasis added). This statement
9 was and remains flatly inaccurate.

10 Rather than simply admitting that the formulation of proposed amendments was not complete
11 as of issuance of the MHA EIS and that Appendix F contained a misstatement, the City says that
12 actual proposed amendments were docketed, pointing to City Council Resolution 31762 (“Resolution
13 31762”).

14 Resolution 31762, executed on August 7, 2017, did not docket any proposed MHA-related
15 amendment proposals by OPCD, although it did docket several proposed amendments by
16 neighborhoods, including the Junction Urban Village. A review of the legislative documents reflects
17 that in Resolution 31762 the City Council (1) requested the Executive to provide recommendations for
18 potential MHA-related Comprehensive Plan amendments; (2) attached as Exhibit A a memorandum
19 by OPCD Director Assefa discussing potential, but not yet proposed, amendments (the “Assefa
20 Memo”); and (3) requested that the Executive consider and make recommendations on the MHA-
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1 related amendments actually proposed by neighborhoods, as modified by the City Council, which
2 were then docketed. Tobin-Presser Reply Decl., Ex. A.⁴

3 The July 10, 2017 Assefa Memo proposes no specific amendments relating to neighborhood
4 planning and indeed, specifically advises that the amendments will not be determined until after
5 public engagement has taken place:

6 The final content of policy language, and the exact text and map amendments will
7 be determined at a future time based on the public engagement and environmental
8 review. Specific text would be developed at a future time, and made available for
9 review by and discussion with community members before City Council adoption of
10 the 2017-2018 amendments. This additional community engagement will occur
11 prior to a final recommendation by OPCD on the 2017-2018 Comprehensive Plan
12 amendments, which is expected in the fourth quarter 2017.

13 Tobin-Presser Reply Decl., Ex. A.

14 Amendments could not have been docketed as of the issuance of the MHA EIS because OPCD
15 undertook its “community engagement” from October 2017 through December 8, 2018 (with the end-
16 date falling roughly a month after issuance of the Final EIS). As discussed in the JuNO Motion, at the
17 time it was preparing the final MHA EIS, OPCD was purporting to offer three amendment alternatives
18 to neighborhoods, two of which are not consistent with the MHA Proposed Action and the impacts of
19 which are not considered therein. See JuNO Motion at n. 5; Tobin-Presser Reply Decl., Ex. B.

20 Unless those proposed alternatives were not legitimately under consideration (which would carry its
21 own set of problems), it was incumbent on the City to identify them and analyze their impacts.⁵

22 ⁴ Resolution 31762 is also attached as Exhibit F to the Wendtland Declaration, however, the copy
23 attached to the Tobin-Presser Reply Declaration was downloaded from the seattle.legistar.com website.

⁵As OPCD is aware, in response to OPCD’s engagement, the Junction Urban Village community
overwhelmingly rejected two of the three alternatives presented. The remaining alternative is consistent with
Residential Small Lot zoning and inconsistent with the Lowrise zoning considered in all three MHA EIS Action
Alternatives. See Tobin-Presser Reply Decl., Ex. B.

1 At a minimum, the MHA EIS should have included each of the three amendment alternatives
2 that were under consideration and summarized any inconsistencies between the alternative and the
3 existing Comprehensive Plan.

4 **3. MHA EIS Fails to Mention Neighborhood Proposed Amendments.** The MHA EIS'
5 complete omission of any reference to neighborhood-proposed MHA Comprehensive Plan
6 amendments underscores the City's absolute dismissal of neighborhoods that has characterized the
7 almost three years of the City's top-down MHA planning. In its offhand assurance that neighborhood
8 policies would be swept away, the City signals its knowledge that its own amendments –whatever
9 they may be - will be approved by the City Council, and the neighborhood-proposed amendments will
10 be summarily rejected.

11 **B. Undisputed Facts Entitling JuNO to Summary Judgment**

12 There are simply no genuine or material issues with respect to the following facts established
13 by the Cross Motion and Tobin-Presser Declaration filed therewith:

- 14 1. In November 2015, the City Council indicated that MHA planning and implementation
15 should be coordinated with the Seattle 2035 Comprehensive Plan update. See Weber
Decl., Ex. F at §§ 2:4-16; 2A and 2B.
- 16 2. The Seattle 2035 Comprehensive Plan was adopted by the City Council in October 2016.
17 Tobin-Presser Decl. at n. 2.
- 18 3. Each of the MHA EIS Action Alternatives violates adopted policies in at least nine of the
Neighborhood Plans adopted by the Comprehensive Plan.⁶
- 19 4. The MHA EIS states that amendments are docketed to resolve the inconsistencies with the
20 Neighborhood Plans.

21 _____
22 ⁶ See JuNO Motion at n. 1 (link to City's neighborhood planning website containing all of the
23 neighborhood plans). The nine Neighborhood Plans single-family policies are Aurora Licton at P-12; Fremont
at FP-13; Morgan at MJ-13; North Rainier at NR-P9; Wallingford at W-P1; Junction Urban Village at WSJ-
P13 and Westwood-Highland Park at W/HP-P18.

- 1 5. As of the issuance of the MHA EIS on November 9, 2017, there were no specific
2 amendments proposed by OPCD or docketed by City Council that would resolve the
inconsistencies between the Action Alternatives and the Neighborhood Plans.
- 3 6. In addition to the Neighborhood Plans themselves, the Comprehensive Plan commits that
4 the City will work with neighborhoods to identify and implement the neighborhood's
vision as to how it will grow. Tobin-Presser Decl., Exs. I, OO and PP.
- 5 7. The MHA EIS fails to acknowledge inconsistencies between the MHA Proposal and
6 Action Alternatives and provisions of the Comprehensive Plan outside of the
Neighborhood Planning section. Tobin-Presser Decl., Ex. W at F.11.
- 7 8. The City's "outreach" to the nine neighborhoods with adopted plans conflicting with the
8 MHA Proposal to identify amendments was purportedly still ongoing when the MHA EIS
was released. Tobin-Presser Decl., Ex. UU.
- 9 9. The MHA EIS inaccurately stated that amendments are docketed and that Neighborhood
10 Plan policies would be modified consistent with those amendments. Tobin-Presser Decl.,
Ex. W at F.11.
- 11 10. The City's purported proposals to neighborhoods to amend their Neighborhood Plans
12 contained alternatives that are inconsistent with the Action Alternatives and the potential
impacts of which are not at all considered in the MHA EIS. Tobin-Presser Decl., Ex. UU;
13 JuNO Motion at n. 5. Tobin-Presser Reply Decl., Ex. B. The MHA EIS fails to mention
these proposals.
- 14 11. The MHA EIS fails to mention or describe the four neighborhood-proposed amendments
15 to the Comprehensive Plan to address inconsistencies between Neighborhood Plans and
the MHA Proposal, despite the fact that these proposed amendments are actually docketed
16 for consideration by the City Council. Tobin-Presser Decl., Exs. W at F.11, QQ and RR.

17 The foregoing undisputed facts entitle JuNO to summary judgment on its claim that the MHA
18 FEIS failed to summarize relevant provisions of the Comprehensive Plan and how the Proposed
19 Action is inconsistent therewith.

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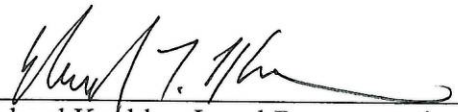
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II. CONCLUSION

Based upon the foregoing, JuNO respectfully renews its request that the Court enter summary judgment in JuNO's favor and finding that the MHA FEIS failed to summarize relevant provisions of the Comprehensive Plan and how the Proposed Action is inconsistent therewith as required by SEPA.

DATED this 17th day of May, 2018.

JUNCTION NEIGHBORHOOD ORGANIZATION

By 
Richard Koehler, Legal Representative
Christine M. Tobin-Presser, Member