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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

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

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

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

**JUNCTION NEIGHBORHOOD ORGANIZATION’S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT REGARDING CITY’S
FAILURE TO PROVIDE ADEQUATE NOTICE OF
DETERMINATION OF SIGNIFICANCE RELATING
TO MHA EIS**

The Junction Neighborhood Organization (“JuNO”) submits this reply (the “Reply”) in support of its Motion for Summary Judgment Regarding City’s Failure to Provide Adequate Notice of Determination of Significance Relating to MHA EIS (the “DS Notice Summary Judgment Motion”). Capitalized terms herein have the meaning identified in the DS Notice Summary Judgment Motion unless otherwise indicated.

This Reply is based upon the files and records herein, including (a) the May 1, 2018 Declaration of Christine M. Tobin-Presser Declaration in support of the DS Notice Summary Judgment Motion (the “Tobin-Presser Declaration”), (b) the Declaration of René Commons in Support of the DS Notice Summary Judgment Motion (the “Commons Declaration”) (b) the

1 Declaration of Geoffrey Wentlandt in Support of the City’s Response to the DS Notice Summary
2 Judgment Motion (the “Wentlandt Declaration”) and (c) the Declaration of Christine M. Tobin Presser
3 in support of this Reply (the “Tobin-Presser Reply Declaration”).

4 I. INTRODUCTION TO REPLY

5 To a homeowner or renter in a single-family zoned neighborhood, one of the most sweepingly
6 impactful changes the City could make would be to rezone the entire neighborhood to multi-family
7 zoning. A wholesale rezone of this kind would irretrievably and almost immediately begin to alter the
8 character of the neighborhood, creating instant uncertainty among homeowners and renters with
9 respect to their long-term plans and, for homeowners, the value of their potentially largest investment.
10 Such a rezone erodes residents’ sense of security in the permanence of their neighborhood and their
11 sense of belonging in what had been their community, in some cases for decades.

12 The City’s MHA proposed rezones would effectuate this scenario in single-family
13 neighborhoods throughout 21 urban villages all across the City. Thousands of single-family
14 homeowners and renters living in single-family homes would be impacted. These individuals were
15 entitled to (1) reasonable notice, including a clear statement that the City proposes to rezone their
16 neighborhoods to eliminate all existing single-family zoning, and (2) an opportunity to attend and
17 participate in a City-facilitated meeting in which interested and impacted parties could gather together,
18 at a set time and location, to hear the City’s proposal, ask questions of the City, discuss the matter
19 with each other, and provide comments to the City as to the important issues for consideration.

20 JuNO is not required to point out every important scoping issue that was missed as a result of
21 the City’s material lack of compliance with SEPA requirements. The City failed to provide the
22 required notice or a meeting and consequently violated WAC 197.11.360, SMC 25.05.360A, WAC
23 197.11.510(1) and SMC 25.05.409. JuNO is entitled to summary judgment as a matter of law.

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II. REPLY

A. Undisputed Facts

There is no genuine issue with respect to the following undisputed facts:

1. The City's MHA proposal involves upzoning single-family neighborhoods comprised of thousands of homes throughout 21 urban villages throughout Seattle. MHA EIS¹ at Appendix H.
2. None of the HALA/MHA materials provided at any of the City's Meetups directed to District 1 prior to issuance of the DS Notice (the "District 1 Pre-DS Meetups") directly advised District 1 residents that the City was planning to rezone all single family areas within urban villages, including the South Park, West Seattle Junction, Morgan Junction, Admiral Junction and Westwood/Highland Park Urban Villages. DS Summary Judgment Motion at III.B.1-7; Tobin-Presser Decl., Exs. L-CC.
3. None of the presentations by the City at any of the City's District 1 Pre-DS Meetups were designed to advise District 1 residents that the City was planning to rezone all single-family areas within urban villages, including the South Park, West Seattle Junction, Morgan Junction, Admiral Junction and Westwood/Highland Park Urban Villages. *Id.*
4. When City representatives were asked directly by attendees at District 1 Pre-DS Meetups about rezoning single-family areas, City representatives equivocated, declined to address and, in one case, misstated the City's intentions. Tobin-Presser Decl., Exs. U, V and X.
5. Materials presented to attendees at least one District 1 Pre-DS Meetup provided information indicating that single-family areas would not be rezoned. Tobin-Presser Decl. Ex. Q6 and Q9.
6. In response to a direct question at a District 1 Pre-DS Meetup as to whether single-family areas outside urban centers (e.g., Downtown, South Lake Union) would be rezoned, Mayor Murray answered in the negative, repeatedly assuring the 350 attendees that the City had "no plans in our single family neighborhoods to upzone." Tobin-Presser Decl., Ex. Ex. V at 3-4.
7. Twenty-one urban villages contain single-family neighborhoods. MHA EIS at Appendix H.

¹The entire MHA EIS can be viewed at [http://www.seattle.gov/hala/about/mandatory-housing-affordability-\(mha\)/mha-citywide-eis](http://www.seattle.gov/hala/about/mandatory-housing-affordability-(mha)/mha-citywide-eis).

- 1 8. Rezoning all single-family areas within urban villages is a central element of the MHA
2 Proposal.
- 3 9. The DS Notice failed to describe the City’s intention to eliminate all single-family
4 zoned parcels in urban villages by changing their zoning designations to multi-family.
5 Tobin-Presser Decl., Ex. FF.
- 6 10. With respect to zoning in single-family areas, the DS Notice stated only that “the City
7 is considering zoning code amendments to allow developments to build slightly higher
8 or slightly more floor area in certain zones” and that “action alternatives will evaluate
9 increased allowable height and floor area in . . . single family zones in designated
10 urban villages.” Tobin-Presser Decl., Ex. FF (emphasis added).
- 11 11. Despite the fact that the MHA rezones would impact directly and indirectly impact
12 thousands of renters and homeowners in single-family zoned neighborhoods in urban
13 villages, spanning all ages, races and socioeconomic classes, the City chose to only
14 publish the DS Notice on its Land Use Bulletin website and in a newspaper geared to
15 businesses, with only 4,000 subscribers. Tobin-Presser Decl., Ex. GG.
- 16 12. The City failed to assemble interested and impacted homeowners, renters and other
17 members of the public for discussion, questions and comment at a scoping meeting.
18 Tobin-Presser Decl., Ex. FF.
- 19 13. Despite the thousands of residents that would be significantly impacted by the City’s
20 intended rezoning, the City received only 59 scoping comments. Wentlandt Decl. at
21 ¶ 4.

22 **B. DS Notice Failed to Describe a Main Element of the Proposal.**

23 The MHA EIS acknowledges that “the greatest potential for significant adverse land use
impact occurs in Single Family areas rezoned to higher intensities.” MHA EIS at (page) 3.116. The
rezoning of every single-family zoned parcel in every urban village to a higher intensity (as opposed
to increasing capacity within the single-family zoning designation as suggested by the DS Notice) is a
primary element of the MHA proposal.

With respect to zoning in single-family areas, the DS Notice stated only that “the City is
considering zoning code amendments to allow developments to build slightly higher or slightly more

1 floor area in certain zones” and that “action alternatives will evaluate increased allowable height and
2 floor area in . . . single family zones in designated urban villages.” Tobin-Presser Decl., Ex. FF.

3 The DS Notice unquestionably failed to adequately describe a main element of the MHA
4 proposal that consists of rezoning all single-family within urban villages. Moreover, the language is
5 false. Changing a single-family zoned neighborhood with its current 30 foot height limits to MHA
6 Lowrise 2 or Lowrise 3 with their 40 to 50 foot height limits would result in allowable height
7 increases of 33%-67%. This is not “slightly higher.”

8 The fact that the City received only 59 total scoping comments with respect to a proposal that
9 would directly, significantly and adversely impact thousands upon thousands of people provides
10 strong evidence that the notice itself failed to sufficiently describe the proposed action. Wendtlandt
11 Decl. at ¶ 4.

12 The City cites three of the total 59 scoping comments, only two of which display an
13 understanding that single-family zones would be impacted, as its evidence that its DS Notice provided
14 a “clear understanding” and adequately informed commenters that it planned to upzone all single-
15 family neighborhoods in urban villages. City Response at 7:3-17. Two individuals out of the
16 *thousands to be impacted is miniscule. Moreover, the City provides no basis for suggesting that the*
17 *two commenters’ knowledge was based on the text of the DS Notice.*

18 **C. City’s Official Newspaper Did Not Provide Reasonable Notice.**

19 WAC 197-11-510(1) required the City to use reasonable methods to inform the public that it
20 was going to prepare an EIS with respect to its MHA proposal. While the Washington Administrative
21 Code permits the City to use its existing notice procedures, it is implicit that those notice procedures
22 must be reasonable. The Code should not be interpreted in a manner that allows the City to
23 circumvent the reasonableness requirement. The MHA proposal would effectuate a massive rezone.

1 Over 10,000 single-family residential properties in 21 urban villages across the City are part of the
2 MHA EIS study area.² Providing notice in a publication with a stated circulation of 4,000, geared
3 toward businesses, is not reasonable. The fact that the City received only 59 scoping comments with
4 respect to a proposal that would dramatically impact thousands of people suggests that the public was
5 not informed of the DS Notice.

6 **D. Summer Parkways Events Did Not Constitute “Scoping Meetings.”**

7 The City acknowledges that SMC 25.05.409 imposes a requirement that the City hold a
8 scoping meeting for City-sponsored projects. City Response at 9:21-23. The City failed to comply
9 with its own requirement. Making City staff available to answer questions and engage in spontaneous
10 discussions with random passersby at an event billed as a “Big Day of Play” does not constitute a
11 “meeting” under any legitimate interpretation of the term.

12 Moreover, the City’s explanation that it intended to make the “meetings” more accessible to a
13 “broader audience” by holding them at two summer festivals in Ballard and Rainier Valley is not
14 credible. Any benefit in the form of an increased audience would be vastly offset by the fact the
15 people are attending an event billed as a festival, not a serious land use meeting about rezones
16 *impacting thousands of single-family residences.*

17 An individual at an event promising to “Bring the fun back to Ballard” or characterized as a
18 “Big Day of Play” was unlikely to devote a significant amount of attention to the materials handed out
19 by City staff beyond the first page, which characteristically fails to say anything about single-family
20 rezones. Wentlandt Decl., Ex. 1 (the “Scoping Handout”). Surprisingly, the second page does
21 mention single-family rezones in urban villages. In sharp contrast, at the subsequent West Seattle
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23 ²Tobin-Presser Reply Decl. at ¶ 2.

1 Junction Summer Parkways Event on September 25, 2016, which the City also characterizes as a
2 HALA/MHA District 1 Meetup, the six types of materials provided by the City were entirely different
3 than the Scoping Handout and once again failed to say anything about rezoning single family areas in
4 urban villages or elsewhere within their 27 pages. Tobin-Presser Decl., Exs. L-O; Tobin-Presser
5 Reply Decl., Ex. A. None of the six sparse written comments provided by attendees demonstrate any
6 understanding that the City is proposing to rezone all single-family neighborhoods. Tobin-Presser
7 Decl., Exs. B-D.

8 **E. District 1 Pre-DS Notice Meetups Omitted Zoning Discussion**

9 JuNO's Summary Judgment Motion discussed every District 1 Pre-DS Meetup for the sole
10 purpose of demonstrating that the DS Notice's failure to clearly disclose the City's intention to rezone
11 all urban village single-family neighborhoods is entirely consistent with every instance of purported
12 HALA/MHA outreach to District 1, containing five urban villages. The City's omission was not
13 accidental. As early as April 2015, the HALA Advisory Committee, composed primarily of developer
14 and housing advocates, was discussing how to "message" rezoning and create alliances to overpower
15 neighborhood concerns:

16 The zoning strategies will face neighborhood resistance. What partnerships or
17 alliances to [sic] you see in creating the momentum to move these forward?
18 Opportunities for messaging?

19 Tobin-Presser Reply Decl., Ex. N.

20 Clearly, the strategy decided upon with respect to messaging was to avoid using the word
21 "rezone" when communicating with neighborhoods.

22 The City criticizes JuNO for characterizing the Pre-DS District 1 Meetups as MHA events.
23 JuNO does so because these events are specifically identified the MHA EIS' Community Engagement
appendix as part of the City's purported MHA engagement. Tobin-Presser Decl., Exs. L and M. Each

1 Meetup was undertaken at a time when the City knew that it intended to rezone single-family areas in
2 urban villages and had a responsibility to advise residents of its plan.

3 Under the circumstances, the City's suggestion that JuNO is improperly conflating single-
4 family neighborhoods within urban villages with other single-family areas is almost laughable. In its
5 presentations and in its materials directed to impacted neighborhoods, the City continually failed to
6 distinguish urban village single-family neighborhoods from single-family neighborhoods outside of
7 urban villages. It cannot now point to the distinction and suggest that the misled residents should
8 simply have known what the City meant or that the City viewed their neighborhoods as negligible.

9 **F. City's Cited "Outreach" Highlights its Failure to Advise Impacted Residents of Rezones.**

10 Because the DS Notice was required to describe the main elements of the proposal within its
11 four corners, the City cannot rely on (selective) examples of its purported outreach outside of the DS
12 Notice to cure its deficiencies within the notice.

13 Despite their irrelevance in evaluating the sufficiency of the DS Notice, each of the City's
14 cited outreach examples further demonstrate the lack of "open and express" disclosure it proclaims.
15 City Response at 3:19.

16 1. **January 26, 2016.** *The City indicates that it held a large public event at which it*
17 *displayed a map of the area proposed for MHA implementation and a map of the urban village*
18 *boundary expansions. Wentlandt Decl., Ex. 2. The MHA-related map states only that MHA it*
19 *"[a]pplies to all areas of the city **where commercial development and multifamily housing are***
20 ***allowed.**" Id. (emphasis in the original). It fails to state that single-family areas within urban villages*
21 *would be rezoned to allow such multi-family housing.*

22 2. **April 19, 2016 - Livability Night Out at MOHAI.** The City's website invited people
23 to "join Mayor Ed Murray and his team to learn and talk about what makes Seattle livable" and then

1 to visit the rest of the museum. Tobin-Presser Reply Decl. at Ex. E. The record contains no evidence
2 that this invitation was directed to urban village residents nor does it advise that urban village single-
3 family rezones would be discussed.

4 Among the five boards displayed at the museum open house event are two non-prominently
5 placed, single sentences regarding single-family zoned areas in urban villages, neither of which use
6 the word “rezone.” Wentlandt Decl., Ex. 2. One diminutively states that “[e]xisting single family
7 areas within designated urban villages are expected see some change to allow small forms of
8 multifamily housing.” *Id.* at (page) 5. The other is buried within 10 bullet points. Wentlandt Decl.,
9 Ex. 2 at 4. More significantly, these materials, presented at a non-neighborhood “Meetup,” are
10 different from the materials and information presented to residents at the District 1 Pre-DS Notice
11 Meetups occurring during the same time frame and which did **not** disclose the City’s intention to
12 rezone all single-family parcels in urban villages at all. DS Notice Summary Judgment Motion at
13 III.B.1-7; Tobin-Presser Decl., Exs. L-CC.

14 **3. MHA Principles.** The City asserts that prior to issuing the DS Notice it sought input
15 from the “community” from April to August 2016 to shape eight principles to guide MHA’s
16 implementation, including “[a]llowing more variety of housing types in existing single-family zones
17 within urban villages.” The principles were authored by the City based upon the input it chose to
18 utilize. Tobin-Presser Reply Decl., Ex. F.³

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21 ³ The City’s materials state that “[t]hese principles emerged from extensive engagement with Seattle
22 community members. They reflect input we have heard through months of conversation across the
23 city in our neighborhoods and online.” Wentlandt Decl. at Ex. 4 (language appears in footer to each
page) (emphasis added).

1 Notably, the wording of the principle relating to single-family zones studiously avoids using
2 the word “rezoning.” The principle could easily be read to mean expanding the definition of single-
3 family zoning to facilitate housing types that are accommodated within that zoning, including
4 duplexes, triplexes ADUs and DADUs.

5 The City indicates that the MHA principles were discussed during multiple community
6 meetings, focus group meetings and an online dialogue platform (Consider.it) between April and
7 August 2016. The City cites no examples of specific community meetings occurring within any of the
8 five urban villages within District 1 (or anywhere else) between April and August 2016 at which input
9 was sought or collected relating to the MHA principles.

10 The City cites its HALA/MHA focus group meetings as a tool it used to seek input from the
11 community. Unfortunately, as the City is well aware, focus group participation and attendance was
12 lackluster, at best. Less than half of the Hub Urban Village focus group members, and a total of six
13 non-focus group members, even attended the August Hub Urban Village focus group meeting at
14 which Nicholas Welch of the OPCD, the proponent of MHA, guided the discussion regarding what
15 issues would be important for scoping. Tobin-Presser Reply Decl., Ex H (Meeting Summary of
16 August 21, 2016 meeting).

17 The Consider.it website input with respect to the MHA Principles can be viewed online.⁴ The
18 website did not advise or indicate that the City intended to rezone all single-family neighborhoods
19 within urban villages, nor did it ask for input on that issue.⁵

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21 ⁴ <https://hala.consider.it/?tab=Feedback%20on%20key%20principles>

22 ⁵ Additionally, Consider.it input is anonymous with no assurance that actual community members are
23 providing input, as opposed to members of special interest groups, aligned with the City’s goals, who
have rallied their supporters to weight the discussion in favor of their agenda. Tobin-Presser Reply
Decl., Ex. I-L. The City has acknowledged that it does not prioritize limiting comments to impacted

1 **G. Lack of Adequate Notice Denied the Public of Scoping Input Opportunities.**

2 The SEPA process requires open engagement with the public. After a Determination of
3 Significance, public notice is required and agencies are thereafter required to invite comments
4 regarding scoping.⁶ The adequacy of notice is critical in order to ensure that the public comment
5 period is of value. If the public is not aware of the intended action, or if they have been misinformed
6 as to its true nature, then the public has been denied the opportunity to make meaningful comments
7 that would guide and help shape the EIS study areas and its alternatives. All parties can only
8 speculate as to how the process could have unfolded differently had the Notice been adequate.

9 The Junction Urban Village's first point of awareness that MHA would include sweeping
10 single-family zoning changes arose after the scoping period had already ended, through the City's
11 quiet release of proposed rezone maps, coverage by West Seattle media, and the JuNO organized
12 meeting to start a public awareness campaign in late October and early November of 2016. Tobin-
13 Presser Decl, Exs. E and F; Commons Decl.

14 As of November 2016, the HALA website presented information that the City would proceed
15 with MHA action in the first quarter of 2017. The Junction Urban Village's public reaction included a
16 *petition to defer the process so that neighbors could build awareness and understand and contribute to*
17 *the process.* Tobin-Presser Reply Decl., Ex. O. Only then did public input based upon the disclosure
18 of rezones began in earnest. Such input included JuNO's letter to OPCD Director Assefa that
19 identified issues that should have been considered during EIS scoping but were not, because the
20 comment period had already ended. Tobin-Presser Decl., Ex. O.

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22 individuals but rather welcomes comments from those that are simply "interested in the outcome."
23 Tobin-Presser Reply Decl., Ex. M.

⁶ WAC 197-11-502.

