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Law Offices

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A Professional Service Corporation

1201 Third Avenue, Suite 2900, Seattle, Washington 98101
Telephone (206) 223-1313, Facsimile (206) 682-7100

Portland Office
Pioneer Tower, Suite 650, 888 S.W. Fifth Avenue, Portland, Oregon 97204
Telephone (503) 248-1330, Facsimile (503) 274-1214

Please reply to Seattle Office

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Gary D. Huff
(206) 224-8024
ghuff@karrtuttle.com

April 28, 2011

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
PO Box 97428
Seattle, WA 98124-4728

RE: Appeal of the Recommendation of the Hearing Examiner
In the Matter of the Application of Gary Huff on behalf of University
Christian Church and University Presbyterian Church for approval of a
contract rezone of property located at 4735 15th Avenue NE
CF 309434
DPD Reference: 3004384

Dear City Council:

Please accept this letter as the appeal of University Christian Church and University Presbyterian Church of the Recommendation of the Hearing Examiner in the Matter of the Application of the undersigned on behalf of University Christian Church and University Presbyterian Church for approval of a contract rezone of property located on 15th Avenue NE between 47th and 50th NE.

I. Purpose, Background and Clarifications.

University Christian Church ("UCC") sees this rezone request as an extension of its mission: to house and provide for the underserved elements of our community. It is for this purpose that the subject properties were acquired over time. It is for this purpose that the

houses now existing on the UCC properties are used to provide lodging for low income University of Washington students.

To describe the church's request as establishing commercial zoning is a misnomer. NC zoning is sought not because of any desire or intent to engage in commercial enterprise. NC zoning is a means to an end. It allows sufficient density and lot coverage to make low income housing feasible. As noted in the Examiner's recommendation, other possible zoning designations contain provisions or restrictions which preclude the attainment of that objective.

Similarly, UCC does not intend to construct a market rate housing project with a minimally sufficient low income housing component. UCC intends to dedicate its entire development to the low income and underserved communities.

University Presbyterian Church ("UPC") has no specific plans for its portion of the property except to allow for a future expansion of church-related uses which may or may not include a low income housing component.

II. **Objections to the Hearing Examiner's Recommendation.**

A. Mischaracterization of Applicants' Intended Use. The Examiner characterizes Applicants' intended use as commercial and analyzes commercial zoning against the locational policies of SMC 23.34 and the University Community Plan. As noted above, Applicants' intended uses are not at all "commercial" in the normal meaning of that term. The actual uses are better characterized as low income housing, social services and religious—uses which are hardly "commercial" and which should be encouraged.

In Conclusion 8, the Examiner also mistakenly characterized the proposal as an encroachment of commercial zoning into residential areas. As noted at page 2 of the Director's Recommendation (the "Staff Report"), "The subject area is transitional between the University District commercial area to the west and south west, multi-family zoning and developed areas to the east and single family zoned areas to the Northeast. The subject parcels (currently) form an extension of L-3 zoning *into* an area of Neighborhood commercial zoning to the west and south."

The Staff Report further notes at page 5 that "The proposed rezone would represent a movement of the commercial zone into the existing multi-family area to the east. To characterize this action as an encroachment would be to conclude that it would be a negative move reducing the viability of the multi-family area and creating the opportunity for intrusion of commercial uses." The report notes the heavy traffic along 15th and concludes that "The

proposed rezone can be seen as an adjustment to the predominant zoning pattern by including a busy area in the commercial district and not an encroachment into the more quiet residential areas to the east.”

- B. Misplaced Reliance on Inapplicable Policies in the University Community Urban Center Neighborhood Plan (Conclusion 14). The church properties are located within the University Community Urban Center—a fact which formed the basis of much of the policy analysis and justification in the Director’s Analysis and Recommendation to the Examiner. The Examiner ignored much of the Department’s analysis and instead concentrated on policies contained in the University Community Urban Center Neighborhood Plan (the “Neighborhood Plan”). However, as noted at page 7 of the Director’s Recommendation, SMC 23.34.008D(2) merely provides that “Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.” “Taken into consideration” is substantially different than “shall control.”

Despite this, the Examiner cites the goals and policies of the University Plan as a basis for recommending against the requested rezone (Conclusion 14). Even the Neighborhood Plan itself at UC-P4 states that “These goals and policies . . . are *not* intended to change the policy basis for consideration or rezones proposed after adoption of these goals and policies.”

The Staff Report notes that Figure 1 (a *schematic* map of residential neighborhoods which generally depicts the east side of 15th Avenue as part of a low rise multifamily residential neighborhood) is the *only* mention of any kind of this area. The Staff Report further states that there is *no* indication of any kind that Figure 1 was intended to give policy direction with regard to rezone decisions.

The staff report concludes its discussion of the Neighborhood Plan: “The University Community Urban Center Neighborhood Plan does not provide direction with respect to the proposed rezone.” Yet a substantial portion of the Examiner’s recommendation is based on language which, as noted by DPD, was not intended to provide policy direction.

- C. Improper Application of Locational Criteria. In Conclusion 10, the Examiner states as follows:

“The site is located on a street with good capacity and a mix of parcel sizes, but it would not meet the NC2 locational criterion of providing a secondary business district in urban centers that extends for approximately 2 blocks. It

would meet the criterion of having a lack of strong edges to buffer the residential area to the east.”

The Examiner thus recognizes that the proposal meets *all but one* of the NC2 locational criteria set forth in SMC 23.34.076B. The exception, according to the Examiner, is the criterion addressing a 2 block secondary business district. The Examiner, however, ignores the introductory language of this code section which provides that “A Neighborhood Commercial 2 zone designation is most appropriate on land that is *generally* characterized by the following conditions . . .” This language explicitly recognizes that strict compliance with each and every criterion is *not* required.

- D. Improper “Weighing and Balancing” of Code Provisions (Conclusion 26). In Conclusion 26, the Examiner states that “Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the site is the existing L3 designation.” However, as is more fully explained above, the L3 side of this “weighing and balancing” exercise inappropriately emphasized policies of the Neighborhood Plan which by their terms were *not* intended to play a role in this determination.

The Examiner’s discussion and balancing also failed to take into account the strong policy emphasis and social benefit attendant to the provision of low income housing. That failure should not be allowed to tip the scales in a way which results in the loss of an opportunity to address a grave and dire social need.

- E. Misstatement in Proposed PUDA Conditions. Should the Council concur in the Applicants’ request, UPC in particular wishes to have one misstatement corrected. Proposed Condition 1(a) appropriately addresses the plans and intentions of UCC regarding the redevelopment of its properties. UPC, however, may or may not decide to include residential uses if and when it redevelops its lots for church-related purposes. Thus, Applicants jointly propose that Condition 1(a) be reworded to provide that “New development *on the UCC properties* on the east side of 15th Avenue NE shall be limited to proposals that include primarily residential uses.

III. Specific Relief Requested.

Appellants request that the Council:

- (1) Reject the Examiner’s recommendation of denial; and

- (2) Adopt the Examiner's alternate recommendation to rezone the properties to NC2-65, subject to the PUDA conditions listed in the Examiner's alternative recommendation. UPC specifically requests that the language of Condition 1(a) be amended to clarify that that the condition applies only to UCC properties (as in Condition 1(d) pertaining to the low income housing percentage).

Thank you for your consideration of the request. We believe that the underserved, the churches' mission and the community at large will be benefitted by the implementation of these plans. This rezone is the first critical step in that process.

Sincerely,



Gary D. Huff
Karr Tuttle Campbell

cc: University Christian Church
University Presbyterian Church



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2025 First Avenue, Suite 500
Seattle, WA 98121-3140
Phone: 206.382.9540
Fax: 206.626.0675
www.GordonDerr.com

May 2, 2011

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
Seattle, WA 98124-4728

Re: Appeal of the Recommendation of the Hearing Examiner

*In the Matter of the Application of Gary Huff on behalf of University
Christian Church and University Presbyterian Church for approval of a
contract rezone of property located at 4735 15th Avenue NE*

CF : 309434
DPD Ref: 3004384

Dear City Council:

This office represents University Presbyterian Church, one of the property owners and co-applicant for the above-referenced contract rezone. University Presbyterian Church joins in the appeal statement filed by Gary Huff who represented University Presbyterian Church and the University Christian Church before the Hearing Examiner. Specifically, University Presbyterian seeks the same relief requested by Mr. Huff in his appeal statement, urging the City Council to reject the Hearing Examiner's recommendation to deny the requested rezone and instead to adopt the alternative Hearing Examiner recommendation to approve the rezone to NC2-65, provided that the Council modify the proposed language of Condition 1(a) to apply specifically to the University Christian property (as does Condition 1(d)). We further request that Council provide the appellants with the opportunity for oral argument based on the record, as provided in SMC 23.76.054.F.

The Hearing Examiner decision ignores many of the applicable policies and code provisions evaluated in the Director's Recommendation and Report (Director's Report, **Exhibit 13**) that support the rezone to NC2 and, as a result, reaches several erroneous conclusions. We specifically assign error to Conclusions 5, 6, 8, 9, 10, 14, 26, and 27 (as to proposed Condition 1a specifically). We urge the Council to adopt the analysis contained in the Director's Report and, in weighing the various policies and code requirements, to approve the rezone to NC2-65. This will facilitate the important programs of both religious institutions and, specifically, will

provide adequate housing density on the properties to allow University Christian to develop needed low-income housing to serve the residents of this community and to satisfy the housing policies of the University Community Neighborhood Plan. With the proposed contract rezone conditions, this overriding neighborhood plan objective to provide additional housing and, in particular, affordable housing, at a scale that is compatible with the adjacent residential neighborhoods can be achieved. In fact, given the existing uses along the 15th Ave. corridor, as compared to the existing uses along University Avenue, the proposed rezone will likely provide a greater and nearer-term opportunity for redevelopment and provision for affordable housing in this neighborhood than would reliance on redevelopment pursuant to existing L3 zoning. This is one of the over-arching objectives of the University Community Neighborhood Plan. *See* Policies UC-G4, UC-P16.

University Community Neighborhood Plan: We concur in the conclusion contained in the Director's Report, that this neighborhood plan does not provide any specific direction regarding the requested rezone (**Exhibit 13, p. 7**) and with the assertion in Mr. Huff's appeal statement that the UC Community Plan policies are not intended to be directive in evaluating rezone requests. UC-P4. As such, the Hearing Examiner erred in concluding otherwise, by over-emphasizing the low density residential policies, while ignoring the uncontested record information that explains the reason for the requested increased residential density: i.e., to support the economic feasibility of the desired low-income housing envisioned by University Christian Church. **Exhibit 11.**

In particular, the Hearing Examiner's Conclusion 14, that the "site can accommodate quite a bit of growth through redevelopment" with the existing L3 zoning, is not supported by the facts in the record and the analysis provided by the Director's Report that concluded the opposite. **Exhibit 13, p. 5.** Further, as explained in the Director's Report, UC-P1, which supports ground-related housing, does not apply to the area proposed for this rezone. **Exhibit 13, p. 7.** The Hearing Examiner erred in suggesting that it does in Conclusion 14. It is also interesting to note that the neighborhood plan final report identified the area north of 55th for downzoning to address transition to existing single-family residential neighborhoods further north. The proposed rezone is south of 55th, and, therefore, of less concern for impacts and transition to the adjacent low-density residential areas further north. *See, University Community Urban Center Plan Final Report* at p. III-26.

Applicable Code Provisions—NC vs. L3 Criteria: The Hearing Examiner erred in her over-reliance on the L3 zoning criteria without adequate recognition of the applicable NC zoning criteria—especially in the context of the need to provide additional housing density in this area generally, and affordable or low-income housing specifically. As such, the Examiner erred in concluding that the L3 zoning is the "most appropriate," or that L3 zoning is "functionally well."

In particular, L3 criteria are most appropriate for areas where it is desirable to "limit development to infill projects and conversions." SMC 23.34.020.A. Limiting development along 15th, which is well-served by transit and a half block from the neighborhood retail development to infill and conversions, will do little to achieve the increased housing density desired by the comprehensive plan policies and required to make the economics of low income

housing feasible. In contrast, the Director's Report properly recognized that the NC designation was a more appropriate zoning designation to achieve overall comprehensive plan objectives:

While the past of the subject site on the east side of 15th Ave. N.E. has been of small to medium scale multifamily development these structures are undersized for the current context and redevelopment of both the parking lots and the remaining wood frame structures would more appropriately be done with larger scale structures. The lowrise pattern of moderately sized structures surrounded by yard-like setbacks is of too low a scale to fit with the busy 15th N.E. and the very dense University District Urban Center. A neighborhood commercial designation and development pattern is a better fit. This is all the more true of the proposal areas west of 15th Ave. N.E. where development already is of a scale consistent with neighborhood commercial zoning and it is even more directly connected to the University District Urban Center.

Exhibit 13, Director's Report at p. 5.

In addition, the Director's Report correctly recognized that the proposed rezone to NC2 would not create an "encroachment" into an existing residential area, but rather an appropriate "adjustment to the predominant zoning pattern by including a busy area in the [adjacent] commercial district [immediately to the west along University Avenue.]" *Id.* The Hearing Examiner erred in finding otherwise in Conclusion 8.

Council should adopt the Director's analysis and conclusion that NC2 is more appropriate zoning for this area than L3.

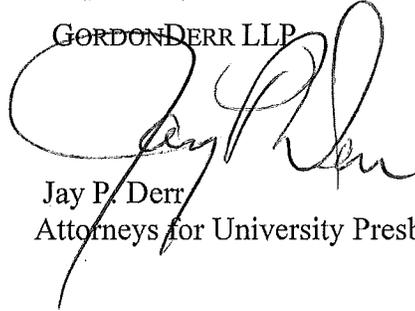
Rezone Condition 1(a): As was stated in the application, University Presbyterian Church does not currently have specific plans for development of its properties within the rezone area. However, it has acquired the property over time for purposes of constructing additional space for worship and fellowship, church administration, social services and, potentially, ministry-partnered commercial activities such as a coffee house or bookstore. While future uses may include some affordable housing, that is not necessarily within University Presbyterian's plans or needs for the site. To impose a "primarily residential" condition on the University Presbyterian Church's ownership could substantially hinder the services and ministries envisioned for that property. In fact, Condition 1(a), as proposed by the Hearing Examiner, was not proposed by the parties during the Hearing Examiner process (*see Exhibit 17*) and would impose a use limitation that does not currently exist with the L3 zoning that is inconsistent with University Presbyterian Church's plans for its ownership. Contract rezone conditions are to be those conditions necessary to mitigate adverse impacts from a proposed rezone. SMC 23.34.004.A. The Hearing Examiner identifies no evidence of adverse impacts that supports imposing this residential use restriction on all parcels within the proposed NC2 rezone.

By revising Condition 1(a) to apply to the University Christian property only, (the same as the limitation found in Condition 1(d), the City can achieve an overall "primarily residential" objective for this corridor, without imposing that restriction on each separate parcel or ownership.

Conclusion: For these reasons, we join Mr. Huff in his appeal and urge the City Council to approve the NC2-65 rezone, subject to the conditions proposed, provided that Condition 1a be revised to limit its application to the University Christian Church properties.

Respectfully submitted,

GORDON DERR LLP

A handwritten signature in black ink, appearing to read "Jay P. Derr", is written over the typed name and firm name.

Jay P. Derr
Attorneys for University Presbyterian Church

e-cc: University Presbyterian Church
Attn: Dale Whitney

Gary Huff,
Attorney for University Christian Church
and University Presbyterian Church

Appeal to the Seattle City Council's Built Environment Committee from the Seattle Displacement Coalition and Interfaith Task Force on Homelessness of portions of the Hearings Examiner Decision on the Contract Rezone Application by University Christian Church CF 309434 (DPD Reference: 3004384 – to rezone the parcels along both sides of 15th Ave NE between NE 47th and NE 50th Streets)

May 2, 2011

City of Seattle
Built Environment Committee
c/o Seattle City Clerk
600 4th Avenue, Floor 3
P.O. Box 94728
Seattle, WA 98124-4728

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Dear Councilmembers,

The Displacement Coalition and Interfaith Task Force on Homelessness hereby submit this appeal of portions of the Hearings Examiners Decision regarding requests by property owners, including University Christian Church and University Presbyterian Church to 'upzone' properties fronting both sides of 15th Avenue NE between NE 47th and NE 50th from an L3 residential classification to the commercial classification NC3-65.

The Seattle Displacement Coalition is a 34 year old low income housing and advocacy nonprofit group here in Seattle with membership directly and indirectly affected by this proposal. The Interfaith Task Force on Homelessness is a ten year old interfaith group established to provide a forum for leaders and members of the faith-based community around the goal of both expanding and preserving our area's low income housing stock. The Task Force also has participants and members who are directly and indirectly affected by this project.

OUR APPEAL:

We are NOT appealing the Hearings Examiner's primary recommendation to DENY OUTRIGHT the requested rezone. However, WE ARE APPEALING the Hearings Examiner's fallback or secondary recommendations outlining conditions she says should be affixed to a rezone in the event the City Council chooses to move forward anyway and approve a rezone. In particular, we are appealing the adequacy of the low income housing mitigation she has recommended as a condition for the rezone.

The Hearings Examiner's proposed housing condition does not go far enough to ensure full replacement of low income and affordable housing both directly and indirectly threatened as a result of any upzone of these properties. As such, her recommended mitigation is inadequate as well as inconsistent with clearly stated and long established goals and policies of the City aimed at preventing displacement.

In this appeal we will cite precedents for such housing mitigation including several areas of the city's land use code, SEPA policies, Comp Plan, and in resolutions and ordinances on the books for years in Seattle. These policies and laws give clear and (in some cases) very explicit guidance to the Council to require more adequate housing mitigation as a condition for a rezone especially when that rezone will cause significant displacement as this proposal will.

First we will show what those impacts are and then cite these precedents and guidance given to the Council under existing laws and policies. And then we will indicate what we believe that specific mitigation should be allowed consistent with the law and within your legally defined authority and legislative mandate.

What the Hearings Examiner did recommend as housing mitigation and our response to it:

Contained in the Hearings Examiners fallback set of recommendations she does call for a PUDA that includes a commitment from one of the property owners – University Christian Church – to replace 1 for 1 all low income housing they would remove on their properties subject to this rezone.

Since the developer – University Christian - will be removing housing for 18 existing low income households for a new development already planned (which is the reason for this rezone), she calls for a PUDA that requires the Church in their new development to include 18 units priced below 50% of median or 20% of the new units at those rent levels, whichever is greater. Parenthetically, University Christian has indicated to our organizations, to DPD and the Hearings Examiner that they are willing to fulfill this replacement obligation.

We are pleased with and strongly support this specific recommendation by the Hearing Examiner and we appreciate the Church's good faith commitment so far in the process to meet this responsibility. This sets a critically important example at a time when much new residential construction (accommodated by the city's interest in rezoning much of our city) threatens a considerable portion of our remaining low income housing stock. It affirms the long running city principle (already embedded in several places of the code and elsewhere in city policy) that developers can move forward with their plans, receive the very lucrative economic and financial rewards that accompany an upzone (which in this case greatly deviates from the current code as affirmed by the Hearings Examiner's decision to deny) while also fulfilling a 1 for 1 replacement requirement at comparable price – thereby reinforcing rather than undercutting the city's stated and longstanding policy goal of no net loss of low income housing.

If the rezone is granted University Christian Church says they will build 200 units of housing on the site they own at the Northeast corner of the block and that it will include at least 18 units serving unrelated low income and minority households. That's the number of low income households now living in two older buildings/homes that will be removed for their new development under the rezone.

But with respect to the Church, it is only an oral commitment right now and only applied to that one property owner. Consequently the replacement obligation absolutely must be affirmed and codified as a 1 for 1 replacement requirement for all property owners and future properties who

might reap the benefits of this rezone; including the site now owned by U-Christian. For example, what if after the rezone, U-Christian's abandons their plan and they instead choose to sell the property now at an inflated value to another party? One for one replacement requirements must be written as an obligation that is carried to the new owners. Given the way the Hearings Examiner drew up her "1 for 1" recommendation, she did not craft it properly to achieve this and it does not apply at all to the rest of the property owners on the affected block.

What the Hearing Examiner left out of her housing mitigation requirement:

Our primary concern is that the Hearings Examiner set a replacement obligation for U-Christian's planned development but she neglected to address THE REMAINDER OF THE BLOCK. For these other properties, she did not impose any conditions at all to mitigate low income housing impacts, both direct and indirect that would accompany redevelopment set in motion by this rezone, nor did she consider the impact of the rezone on low income housing on properties immediately surrounding the rezone especially blocks north of the rezone area.

This contract rezone includes both sides of the entire block along 15th NE between 47th and 50th, U-Christian owns roughly less than 20-30 percent of the affected properties. The remainder is not under University Christian's ownership. These include at least three other low income housing buildings and an estimated 50 low-income and low-moderate income households. Those sites include the Hiatt Apartments at the south end of the block, another four unit apartment directly south of University Christian's properties, and a old large home broken up into separate units that provide housing for approximately 8 working and student households.

Not withstanding University Christian's intentions, an upzone such as this one poses a grave threat to low income housing located on this block not under University Christian's control. Given the additionally allowed density and non-residential uses that could be allowed, the economic balance easily tips toward redevelopment of these properties that could lead to demolition of more low income units on this block.

Of even greater significance, the kind of precedent will be set for other rezone requests especially for blocks along 15th immediately north of the site where hundreds of additional low-income housing units are located in both large group homes and lower density apartment buildings. At present, few of these units are at risk of demolition under current zoning. If that area is rezoned and allowable densities are increased there, the loss of many more affordable rentals is likely. We are thus looking at significant impacts on existing low-income opportunities; that is, housing directly affected in the block to be rezoned and hundreds more indirectly affected.

(We strongly disagree with the Hearings Examiners conclusion that the rezone will not set a precedent that encourages future rezones of blocks directly north of the rezone area. Quite the contrary, the upzone creates a contiguity that otherwise would not exist and allow developers on blocks north of the rezone which now are only residential to argue that contiguity meets a key city criteria for granting rezones. It also would dramatically change the economics of

redeveloping those sites and likely prompt rezone requests, and sales turnover from longer term owners to speculator/developers.)

For these and other reasons, should the Council decide to approve this rezone, it is necessary to build into your approval, a provision explicitly requiring developers to replace 100% of the units they remove and at comparable rent. Note also as we highlight below there now is nothing unusual about doing this or unprecedented were the council to require this, given the long policy history you have where you have already done this.

Without this latter condition, the rezone becomes a recipe for accelerated displacement and loss of low-income housing in the neighborhood and city. It also sets in motion a spillover effect setting the stage for similar upzones immediately north of this block along 15th that could lead to demolition, gentrification, and displacement of existing low-income housing on a much broader scale.

Consequences of this rezone without an adequate 1 for 1 low income housing replacement requirement:

Once this so called "contract" rezone is issued, the developer is free to undertake just about any kind of development that otherwise would be allowed within the NC-65 zone – subject only to minimal requirements outlined by the Hearings Examiner and an inadequate replacement requirement.

Under NC-65, the developers for example could line portions of either side of block with commercial establishments, bars and nightlife establishments totally and completely out of scale and character for that area and completely inconsistent with neighborhood planning and comp plan goals for that area. Those plans and policies call for limiting these uses along University Way and not 15th. (Note that such commercial uses on the ground floor become more likely as conditions such as added setbacks are imposed on the upper floors. Developers will look to recoup profit lost from the upper floors with more intense commercial uses on the lower floors)

Or the developers could turn much of the site over to the University of Washington for offices as well with full frontage facades as they have done elsewhere in the community (such as along Roosevelt). Numerous other options and uses would be allowed that are wholly unacceptable for this area, inconsistent with the community and comp plan and at densities far out of scale with the surrounding community especially in relation to the lower density homes and properties to the east and northeast. The result of this will lead to more displacement and loss of existing low income housing concentrated in the surrounding area.

DPD acknowledges the lower density character of the block subject to this contract rezone but then goes on to say "the lowrise pattern of moderately sized structures surrounded by yard-like setbacks is of too low a scale to fit with the busy 15th N.E. and the very dense University District Urban Center. A neighborhood commercial designation and development pattern is a better fit." Nothing could be further from the truth. This is wholly a distortion of the longstanding character of this area and does not in anyway reflect current trends or community or comp plan goals for this area.

As the U-District Community Council (UDCC) states in its letter to you, "if this is the case, why stop at NC-3 65 zoning 50th Street? Why not just upzone all of the properties along 15th Ave NE north of 50th in the same manner or, for that matter, all of the U-District Urban Center?" Such densities and commercial uses are designated for parts of the strip along University Way but never have they been slated or intended for 15th Ave NE. In fact it likely would set in motion a serious spillover and spread of these denser and intense commercial uses into an area DPD itself acknowledges is predominantly mixed lower scale and residential. Other than church activity on part of that block all activity now on that street is residential running northward block after block.

As stated in the UDCC letter, this move to NC-65 is directly contradictory to longstanding community and comp plan goals aimed at preserving their existing low income and affordable housing. DPD appears to have left out any and all such assessments and acknowledgements – dismissing them in part perhaps because developers seeking this rezone say they plan lower income housing for the site. But again, there's nothing in the contract rezone to guarantee that any social objectives are met other than on U-Christians site which itself can be overridden effectively if they sell their property.

Please note that the DPD decision, in order to suggest the area is more transient and transitional than it really is, does not adequately or accurately describe the type of housing, price of that housing, and nature and income of the residents who live within the rezone area. In fact, there's no analysis at all of the housing that will be lost, or the people who will be displaced and their incomes. The DPD assessment bordered on dismissive in fact of the current residential character of that area saying only that it's "student housing" and made up of "apartments". This is not the case at all as demographics of that area indicate.

Further, a significant percentage – perhaps the majority of the rest of the units located on both sides of 15th NE between NE 47th and NE 50th are occupied, not by students, but by low income and moderate income working people – many of whom also work in the immediate area – and who have incomes well below 50-60 percent of median income. This is certainly true of the Lothlerian Apartments immediately South of the Wayfarer (out building). And this is no less true of the current residential buildings that would be torn down and redeveloped on the east side of the block where there are now approximately 30-40 low income households in several residential building. We personally know this because I've circulated fliers and knocked on most doors on either side of that strip and talked personally with many of the longtime residents who reside there.

The DPD analysis did not acknowledge this low income housing loss in buildings that will be removed (or the indirect and cumulative affect on surrounding blocks) or provide numbers or any assessment of the impact of this loss both direct and indirect on the stock of low income housing in the U-District. Nor did the Hearings Examiner's decision because it did not build into the decision adequate conditions or requirements ensuring that whoever redevelops on either side of the block – in order to receive the benefit of this rezone – replace any of these units at comparable price. There is no 1 for 1 requirement built in as a condition of this rezone to ensure compatibility with any social objective or in order to ensure compatibility with clear

longstanding goals built into public policies, the zoning code and comp plan requiring 1 for 1 replacement of any low income housing that is removed.

Longstanding city precedents for attaching full 1 for 1 and at comparable price:

Lest current councilmembers have doubts about this longstanding commitment, we have attached explicit and extensive documentation showing it is the city's intent to attach housing conditions to future upzones in our city to ensure 1 for 1 replacement and at comparable price. Indeed, our land use code, in more than one place, already includes language prescribing 1-for-1 replacement of low-income housing when major institutions expand, and also when developers seek permits to build above normal zoning constraints in mid-rise and high-rise zones.

In December 2008, the city adopted an incentive zoning program for mid and highrise zones which includes the following language: See **SMC 23.58A.014 Ordinance 122882 D.** *If a rental housing building on a lot contained four or more dwelling units that were occupied and demolished on the site of the new project within 18 months prior to a Master Use Permit application to establish bonus residential floor area on the lot, the amount of low-income housing to be provided under subsection B1 of this Section is increased by the gross square footage of any units within the building that were rented to tenants who received a tenant relocation assistance payment under Chapter 22.210*

In 2006, the Council also approved **Resolution 30939 committing the city to implementation of incentive zoning schemes more broadly with a goal to both preserve and expand affordable housing.** An excerpt of that resolution reads: *WHEREAS, ESHB 2984 provides an opportunity to broaden the application of incentive programs throughout the City, both to stimulate additional housing development and to ensure that a portion of it is affordable; and WHEREAS, developers or property owners benefiting from zoning code changes should be asked to participate in creating necessary infrastructure and amenities, including affordable housing, to meet community objectives and create livable communities;*

Further, 1-for-1 requirements are included in many other places in the code and in the comprehensive plan via language indicating the city's intent to apply this condition more generally to preserve our low-income stock. These polices date back decades clearly expressing the council's intent to ensure no net loss of low income units, particularly in discretionary land use decisions involving rezones, changes in major institutional boundaries, etc.

Please see Attachment One (that directly follows this appeal letter and is attached below) which provides a specific list of all language codified in law that the City Council already has adopted indicating clear intent and providing specific guidance especially when granting rezones to require 1 for 1 REPLACEMENT OF LOW INCOME UNITS AND AT COMPARABLE PRICE.

(Also, we do not attach it hear but choose to reference a legal opinion our attorney submitted in the case involving expansion of Children's Hospital highlighting the legality and constitutionality of 1 for 1 replacement requirements AND AT COMPARABLE LOW INCOME RENTS. There should be no debate about whether this is legal given the city's long history of

imposing replacement requirements AT COMPARABLE PRICE. But in case this comes up again please see our legal memo attached and submitted for the record in the Children's case to the Council's Built Environment Committee. We reference it here so we can cite it in this case should legal questions be raised.)

Specific 1 for 1 language we recommend:

We recommend the City Council take the Hearings Examiners 1 for 1 replacement language and apply it to all affected property owners and future property owners on the block. To achieve that, below we are proposing some specific language. It is language drawn from existing precedents and housing mitigation language already adopted by the Council and applied elsewhere under differing conditions but when developers tear down existing low income housing. We present this language as a specific recommendation and call on you to adopt this or similar language that absolutely ensures 100 percent replacement of all housing affected by this rezone and at comparable price.

Most importantly to the Coalition, a requirement must be built into the decision explicitly requiring 100 percent comparable replacement (1 for 1 replacement) of all types of housing that will be lost and especially a requirement that requires developers to replace all units they remove at comparable low income rents serving those at low income levels below 50% of area median or less. Again, there is absolutely nothing unusual for the Council to do this because it's embedded elsewhere in the code and in policies dating back years.

Without this condition, the rezone becomes a recipe for accelerated displacement and loss of low income housing in the neighborhood and city. It sets in motion further redevelopment of the surrounding blocks and indirect displacement of dozens of other low income units as well.

The language we are asking you to support for the contract rezone (DPD Project 3004384): We support insertion of the following requirement as a condition that any developer/owner, current and future, must meet prior to redevelopment within the area subject to the rezone (area running along 15th NE from NE 47th NE to NE 50th and bounded by alleys to E. and W.) The text we use below draws directly from the text contained in other existing city laws as well as state and federal law which we cite in the accompanying attachment:

If a rental housing building on a lot contained four or more households (each with a separate landlord/tenant agreement) or that were occupied by such households and demolished on the site of the new project within two years prior to a Master Use Permit application for redevelopment of that lot, the developer is required to provide an amount of functionally equivalent housing that can serve an equal or greater number of low income tenants who are currently renting in the building (or who were renting in the building at any one time within the two years prior to the Master Use Permit application). A low income tenant means any household earning less than 50 percent of area median. The units shall be "functionally equivalent" when they are comparably priced, affordable to those who were displaced, and conform to the definition contained in Attachment A #2 of HUD Oct 2000 "Relocation Authority for HOPE VI Grants" Rules ([click here](#) and see footnote below). Further, the additional low-income housing is subject to the following requirements:

1. *For the first 50 calendar years of operation, the low-income housing shall be affordable to households with incomes at or below 50 percent of median income as defined by Section 23.84A.025.*

2. *A cash payment in lieu of the additional low-income housing is not permitted.*

3. *The replacement housing required under this provision shall be in addition to any low-income housing a developer is required to provide under any existing or future low income housing bonus or other incentive or zoning programs. They shall be completed, and a certificate of occupancy shall be issued, within three years from the time when a certificate of occupancy is issued for any units or for occupancy of commercial space in the project, except that the Director may extend the time for completion if Director finds that:*

(a) The failure to complete the low-income housing is due to circumstances beyond the applicant's control;

(b) The applicant has been acting and may reasonably be expected to continue to act in good faith and with due diligence; and

(c) The low-income housing will be completed within a reasonable time.

** for purposes of this paragraph, functionally equivalent unit means that it performs the same function, provides the same utility and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principle features must be present. Generally functional equivalency is an objective standard, reflecting the range of purposes for which various physical features of a dwelling unit may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the department may consider reasonable tradeoffs for specific features when the replacement unit is equal or better than the displacement dwelling or when a developer chooses to increase the number of such units in order to serve more low income households than were displaced from the site.*

Summary or our appeal:

In sum, granting this rezone without specific 1 for 1 replacement requirements guarantees developments that will cause accelerated and significant displacement of low income households both on the affected properties and in the immediate area especially north of the rezoned properties along 15th.

We have met with church leaders at University Christian. They agree in principle to 1-for-1 replacement as they increase the stock but it is up to you to codify this and apply it to all properties on the block. This is a unique opportunity with the principle developer and sponsor of this application making such an oral commitment up front. There are thus excellent reasons to codify it and build it in as a condition for this rezone for all properties on the block.

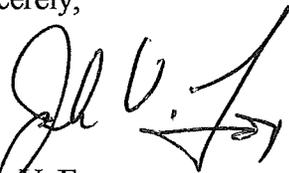
And there is ample documentation we have referenced showing it is the city's intent to attach housing conditions to future upzones in our city. Indeed, our land use code, in more than one place, already includes language prescribing 1-for-1 replacement of low-income housing when

major institutions expand, and also when developers seek permits to build above normal zoning constraints in mid-rise and high-rise zones. Further there is 1-for-1 and or other versions of this requirement included elsewhere in the code and in the comprehensive plan via language indicating the city's intent to apply this condition more generally to preserve our low-income stock. There is nothing unusual for the Council to do this. It even has done so in other cases involving contract rezones (and in PUDA's) such as the High Point Agreement with SHA. (see specific reference listed below with citation)

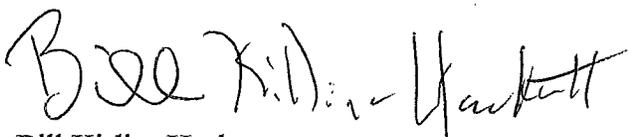
Let's get it done here. The city is moving to increase densities in all our neighborhoods. We can set a precedent here that serves to ensure that when more growth does occur as a result of rezones here and elsewhere, it need not translate into unnecessary housing losses, further displacement and homelessness. Please attach language into this rezone requiring all developers within the affected area to replace 1-for-1 and at comparable price any housing they remove.

Thank you for your consideration and we look forward to your review of this, further opportunity to comment and be a part of your review, and your ultimate decision. We'll look forward to hearing from you.

Sincerely,



John V. Fox
Seattle Displacement Coalition
5031 University Way NE
Seattle, Wa. 98105
206-632-0668
Jvf4119@zipcon.net



Bill Kirlin- Hackett
Interfaith Task Force on Homelessness
3030 Bellevue Way NE
Bellevue Washington 98004
425-442-5418
itfh@comcast.net

Attachment One:

The following is a list of applicable legislation including ordinances and resolutions approved in the last 18 years already in place that affirm clear legal authority to require 1

for 1 or 'comparable replacement' housing including replacement at comparable price and establishing that it is the city's intent to broaden the scope of this authority especially when granting rezones or in other ways when land use changes are approved allowing increased density in our communities

I. List of legislation where 1 for 1 or comparable replacement housing already has been explicitly added by ordinance to the code:

**1. Incentive Zoning in mid-rise and highrise zones
SMC 23.58A.014 Ordinance 122882 Adopted Dec. 2008**

D. If a rental housing building on a lot contained four or more dwelling units that were occupied and demolished on the site of the new project within 18 months prior to a Master Use Permit application to establish bonus residential floor area on the lot, the amount of low-income housing to be provided under subsection B1 of this Section is increased by the gross square footage of any units within the building that were rented to tenants who received a tenant relocation assistance payment under Chapter 22.210

*** Also see resolution passed expressing the city's intent to utilize incentive zoning to ensure replacement of low cost units removed as a result of redevelopment in "multi-family zones throughout the city". Passed Dec 4th 2006 Resolution 30939:**

A RESOLUTION affirming the Council's and Mayor's support for the use of new affordable housing incentive program authority, providing suggested guidelines for expenditure of funds acquired through incentive zoning programs, and requesting reporting by the Department of Planning and Development and the Office of Housing WHEREAS, ESHB 2984 provides an opportunity to broaden the application of incentive programs throughout the City, both to stimulate additional housing development and to ensure that a portion of it is affordable; and WHEREAS, developers or property owners benefiting from zoning code changes should be asked to participate in creating necessary infrastructure and amenities, including affordable housing, to meet community objectives and create livable communities; WHEREAS, the Mayor intends to submit and the Council anticipates considering changes to zone designations and development standards for the Dravus commercial area, South Lake Union, South Downtown, Northgate, and multifamily zones throughout the City

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. Affirmation of Support for Use of Incentive Zoning Programs. The Council hereby affirms its support for the use of affordable housing incentive programs in rezones or changes to development standards that increase development potential.

2. Major Institutions Section: SMC 23.24.124 B7 adopted 1994 which reads "Major institutions may not expand their boundaries if the expansion would result in demolition of

residential structures 'unless comparable replacement is proposed to maintain the housing stock of the city.' "

3. Residential Anti-Displacement and Relocation Assistance Plan (September 1998 Ordinance 119163): See especially replacement housing section Section 7 entitled "*One-for-One Replacement of Lower Income Units*", setting 1 for 1 replacement at comparable price requirements in cases where public or private actions involving use of various federal funds causes the loss of existing units.

4. Agreements between the City and University of Washington involving leasing policies (See Section E. 1.b. 1 of Ordinance 121688 Adopted November 29, 2004) which reads:

b. Leasing Policy. The Leasing Policy is as follows:

(1) Permitted Leasing: Notwithstanding any provision of the University of Washington Master Plan and conditions of its approval, the University of Washington may lease any property within the City of Seattle, subject to all of the following:

g) Except as permitted in an adopted master plan, within the , the use of leased space by the University shall neither result in the demolition of a structure(s) that contains a residential use nor change a residential use to a nonresidential use, unless such use is replaced with comparable use within the UDNUCV. Comparable use shall be defined to be the number of units and comparable price to those demolished; and

5. See also ordinances codifying memorandum of agreements between the City of Seattle and Seattle Housing Authority outlining terms and conditions accompanying the City's approval of land use changes for redevelopment of Hight Point (Ord.121164 Attachment 6), Holly Park (Ord's.118687, 121139 Res. 30321; Ord 118605, 119688 and Resolutions 29579, 29578) and Rainier Vista (Ordinance 120562) each requiring SHA to replace 1 for 1 housing that was removed at those sites.

II. Comprehensive Plan language to draw upon when setting 1 for 1 as a condition include these polices dating back decades including: Numerous policies in the Comprehensive Plan reference the need to preserve existing low income opportunities and prevent displacement and gentrification such LU199 "*Major Institutions*" policy as well as H9 and Section 'B' and H10 of Housing Section of Comp Plan. See especially H21 which reads,

"Allow higher residential development densities in moderate density multifamily zones for housing limited to occupancy by low income elderly and disabled households, because of the lower traffic and parking impacts this type of housing generates."

There are numerous other related policies expressing the city's longstanding commitment to preventing gentrification while it promotes growth needed to meet our GMA targets.

III. Language added to the Housing and Community Development Consolidated Plan (See page 3 of the 2011 Update to the 2009-2012 Housing Consolidated Plan Ordinance 123438):

To help address concerns about displacement and the supply of housing that is affordable to Seattle households earning up to 80% of median income, the City's Office of Housing and Council Central Staff will convene an interdepartmental team comprised, at a minimum, of staff from the Office of Housing, Council Central Staff, Human Services Department, City Budget Office and Law Department to consider and develop policy options regarding one-for-one replacement of such housing that is removed as part of public, private or nonprofit development projects. The interdepartmental team will convene in 2011 and provide a report on its findings to the City Council's Housing, Human Services, Health and Culture Committee by no later than August 1, 2011.

Also see page 53 of Update under Rental Housing Objectives which reads:

Promote preservation of affordable housing, and prevent displacement of low-income residents, through purchase and rehabilitation of existing housing.

Also see page 67 of Update which reads:

*Relocation, Displacement, and Real Property Acquisition
Development of affordable rental and homeownership housing should be designed to minimize displacement of households.*

IV. Language added to the Current City Council Work Program for 2011:

"With Council Central Staff, convene an interdepartmental team to consider and develop policy options regarding one-for-one replacement of housing that is removed as part of public, private or nonprofit development projects; report findings to the City Council's Housing, Human Services, Health and Culture Committee by August 1, 2011."

V. The City's 2007 Low Income Housing Inventory Recommendations included a call for 1 for 1 replacement

VI. SMC 25.05.660 Substantive authority and mitigation to deny or condition provides further authority to require inclusion of 1 for 1 replacement and inclusionary zoning pursuant to rezones to mitigate adverse effects. See especially:

SEPA Policies See SMC 25.05.960 Environmental checklist

8. Land Shoreline Use

- a. What is the current use of the site and adjacent properties?
- b. Has the site been used for agriculture? If so, describe.
- c. Describe any structures on the site.

- d. Will any structures be demolished? If so, what?
- e. What is the current zoning classification of the site?
- f. What is the current comprehensive plan designation of the site?
- g. If applicable, what is the current shoreline master program designation of the site?
- h. Has any part of the site been classified as an "environmentally critical" area? If so, specify.
- i. Approximately how many people would reside or work in the completed project?
- j. Approximately how many people would the completed project displace?
- k. Proposed measures to avoid or reduce displacement impacts, if any:
 - 1. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low- income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

SMC 25.05.675 Specific environmental policies

I. Housing.

1. Policy Background. Demolition or rehabilitation of low-rent housing units or conversion of housing for other uses can cause both displacement of low-income persons and reduction in the supply of housing.

2. Policies.

- a. It is the City's policy to encourage preservation of housing opportunities, especially for low income persons, and to ensure that persons displaced by redevelopment are relocated.
- b. Proponents of projects shall disclose the on-site and off-site impacts of the proposed projects upon housing, with particular attention to low-income housing.

c. Compliance with legally valid City ordinance provisions relating to housing relocation, demolition and conversion shall constitute compliance with this housing policy.

d. Housing preservation shall be an important consideration in the development of the City's public projects and programs. The City shall give high priority to limiting demolition of low-income housing in the development of its own facilities.

Comprehensive Plan Policies adopted on July 25, 1994, by Ordinance 117221: SEPA establishes substantive authority to deny or condition to achieve these specific Comp Plan Land Use Goals including the following related to displacement, and loss of low income units

Land Use Section:

LU11 In order to maintain the character of Seattle's neighborhoods and retain existing affordable housing, discourage the demolition of residences and displacement of residents, while supporting redevelopment that enhances its community and furthers the goals of this Plan.

LUG9 Preserve the character of single-family residential areas and discourage the demolition of single-family residences and displacement of residents, in a way that encourages rehabilitation and provides housing opportunities throughout the city. The character of single-family areas includes use, development, and density characteristics.

LUG11 Encourage the development and retention of a diversity of multifamily housing types to meet the diverse needs of Seattle's present and future populations.

LU99 Because low-income elderly and low income disabled persons create lesser impacts than the general population, allow higher maximum density limits in moderate density multifamily zones for housing these populations to reduce costs and provide sufficient density to make the development of such housing feasible.

LU100 includes: Allow high-density residential development in urban centers and hub urban villages. And ...

LU102 Use zoning incentives and other development-related tools to provide for, or preserve, public benefits. Public benefits or other features may include housing affordable to low- and moderate-income households, preservation of historic resources or provision of new public open space.

SMC 25.05.675 Specific environmental policies (and substantive authority for conditioning and denying) to mitigate housing displacement and loss of low income units as contained in land use section

2. Policies.

a. It is the City's policy to ensure that proposed uses in development projects are reasonably compatible with surrounding uses and are consistent with any applicable, adopted City land use regulations, the goals and policies set forth in Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories, and the shoreline goals and policies set forth in section D-4 of the land use element of the Seattle Comprehensive Plan for the area in which the project is located.

b. Subject to the overview policy set forth in SMC Section 25.05.665, the decisionmaker may condition or deny any project to mitigate adverse land use impacts resulting from a proposed project or to achieve consistency with the applicable City land use regulations, the goals and policies set forth in Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories, the shoreline goals and policies set forth in Section D-4 of the land use element of the Seattle Comprehensive Plan, the procedures and locational criteria for shoreline environment redesignations set forth in SMC Sections 23.60.060 and 23.60.220, respectively, and the environmentally critical areas policies.