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June 27, 2011

FILED
CITY OF SEATTLE
11 JUN 27 PM 1:50
CITY CLERK

City Clerk
City Hall, Floor 3
City of Seattle
P O Box 94728
Seattle, WA 98124

Re: **Clerk's File 309434**: Rezone Petition of Lynn Huff for the University Christian Church and the University Presbyterian Church
DPD Reference No. 3004384

Dear Councilmembers:

University Presbyterian Church (UPres) and University Christian Church (UCC) jointly submit this Reply to the Response submitted by John Fox and the Displacement Coalition in the above-referenced appeal. While, as stated in our joint Response dated June 20, 2011, UPres and UCC are both willing to voluntarily commit to one-for-one replace of all low income housing units owned by those two entities (the east side of 15th Avenue NE), UPres and UCC did not offer that commitment for properties on the west side of 15th Avenue NE within the proposed rezone area because UPres and UCC do not control that ownership. Without delving into the legal arguments as to whether such a requirement can be imposed or not and whether the WAC provision cited in the Displacement Coalition Response can override state court decisions that have looked into such requirements in the past, UPres and UCC again reiterate their voluntary agreement to provide one-for-one replacement in the project proposed on the UCC properties. The conditions that were proposed in our June 20 Response specify this obligation.

Both churches have made this commitment despite the fact that the current residential units are not bound by any low income rental programs, funding or other requirements at this time. In fact, substantial redevelopment of those properties could occur (including redevelopment for church-related uses without housing at all) under the current L3 zoning. Thus, it is important for the City Council to remember that the "obligation" asserted by the Displacement Coalition appeal is not supported by current circumstances, nor none of the code provisions they cite.

However, that debate really diverts from the key point of this appeal. The requested rezone to NC2-65 is necessary to achieve the height and density that is needed to construct the low income and affordable housing project desired on the UCC properties. DPD staff recognized that. Numerous rezone supporters recognized that. Even the Hearing Examiner

recognized that in determining a net benefit to low income housing with the requested rezone. The City Council can achieve the greatest increase in low income housing in this neighborhood by granting the UCC and UPres appeal and approve the requested rezone to NC2-65 subject to the conditions we proposed in our June 20 Response. Those conditions do limit the one-for-one replacement to the east side of 15th Avenue NE, but simply because it is not possible for UPres and UCC to make such voluntary commitments on behalf of property they do not own. Subjecting other properties that are not participants in this appeal and who have not expressly and voluntarily agreed to that obligation, could give rise to a potential challenge by those owners later if/when the City attempted to impose that requirement. Finally, as described in the application and the DPD staff report, the proposed UCC project is expected to construct well in excess of the one-for-one replacement offered by UPres and UCC; provided the additional density that is possible with NC2-65 zoning is approved.

Finally, by reviewing the existing land use map for this area, Council can confirm that the proposed change in the line between L3 zoning and NC2-65 zoning does not constitute a significant new encroachment into a residential area. It simply squares the zoning transition line approximately one block further to the east, and consistent with neighborhood commercial zoning in the block immediately to the south. The same transition issues posed in the Displacement Coalition appeal occur today. The HE alternative decision recognized this and imposed setback conditions to address this transition, which will adequately respond to concerns regarding the transition between NC2-65 and L3 to the east. In fact, the Displacement Coalition Response statement appears to acknowledge this and rather simply fears that DPD might not enforce those conditions.

We urge the City Council to make a decision that advances low income housing opportunities in this neighborhood, to reverse the HE recommendation of denial and to instead grant the rezone to NC2-65, subject to the modified conditions proposed in our June 20 Response.

Respectfully submitted,

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REPLY OF THE SEATTLE DISPLACEMENT COALITION AND THE INTERFAITH TASK FORCE ON HOMELESSNESS TO THE JUNE 20TH JOINT LETTER FROM UNIVERSITY CHRISTIAN CHURCH AND UNIVERSITY PRESBYTERIAN CHURCH RESPONDING TO OUR MAY 2ND APPEAL OF THE HEARING EXAMINER'S DECISION RELATED TO THEIR REZONE REQUEST OF PROPERTIES ALONG 15TH NE, BETWEEN NE 47TH AND NE 50TH STREET

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CF: 309434
DPD REF: 3004384

To: City Clerk and **June 24th, 2011**
To: Seattle City Council (Committee on the Built Environment)

Please note again for the record that we are not appealing the Hearing Examiner's primary decision TO DENY the request for a rezone by University Christian Church (UCC) and University Presbyterian Church (UPC). As stated in detail in our previous appeal and response, we only are appealing the Hearing Examiner's "fallback" position in the event that the City Council decides anyway to grant the requested rezone.

In her fallback position, she did not adequately assess the direct and cumulative adverse effect this rezone would have on the stock of low income housing. And while she did take a critically important **partial step** recommending 1 for 1 replacement for one property owner on the block (UCC), she did not recommend such conditioning for other properties within the enitre rezone area. Please review our May 2nd appeal, June 17th response as well as what we elaborate below for our concerns and recommendations in the event the Council grants this upzone.

Our response to University Christian Church (UCC) and University Presbyterian Church (UPC) June 20th joint letter.

UPC and UCC state they are willing to comply with a 1 for 1 replacement obligation on properties they own and control on the "east side" of the block. However, they go on to request specific language for such a condition that **WOULD NOT** be adequate to achieve that necessary objective either on the properties they own or on properties owned by other parties on the remainder of the block.

1. UPC and UCC state (incorrectly) on page 2 of their June 20th letter that the number of units they own and manage on the east side of the block are set at 18 units. Then they state they would agree to a condition built into the PUDA requiring 1 for 1 replacement of these 18. They want you to specify 1 for 1 replacement of only these 18 even though there are approximately twice that number of units on their properties on the east side of the block that would be lost and approximately another 30 low income units on the West side of the block put at risk.

As we testified and the record shows, there are approximately three dozen tenants living on the east side of the block, under individual lease agreements, and occupying units in buildings owned by UPC and UCC. UPC and UCC concede there are 39 bedrooms in these 18 units and that "individual tenants may choose to share or not share a bedroom".

The Seattle Housing and Building Maintenance Code (See 22.204.090 "H.") defines a "housing unit" as "any dwelling unit, housekeeping unit, guest room, dormitory, or single room occupancy unit." Further, the city's land use code defines a "dwelling unit" as " a room or rooms located within a structure, designed, arranged, occupied or intended to be occupied by not more than one household as living accommodations independent from any other household. The existence of a food preparation area within the room or rooms shall be evidence of the existence of a dwelling unit." (See SMC 23.84A.008 Definitions -- "D.)

Each of the 39 rooms in these structures on the east side of the block appears to have been occupied within the last two years. Further these tenants live independently under individual landlord tenant agreements in individual rooms defined as units under the code. Thus any 1 for 1 replacement language must be written to ensure UPC and UCC is held to full replacement of all these units, not just the 18 they are voluntarily agreeing to replace.

2. Further, UCC and UPC want the City Council to allow UCC alone to fulfill this 18 unit replacement obligation by including them within UCC's planned residential development on the northeast portion of the block. Meanwhile UPC would be relieved of any replacement obligation at all, even though they own and manage at least a rooming house full of units and tenants on the eastside of the block as well.

3. Also, UPC and UCC continue to ignore the fact that this rezone is not just about what they will do with their properties on the east side of the block. This rezone also applies to all other property owners on the west side of block where the record shows there are approximately 3 dozen existing low income rental units which also would be lost over time if the rezone is granted. These losses are in addition to the low income units on the east side of the block that will be removed by UCC and UPC respectively if the rezone is granted.

With respect to these low income units on the west side, this rezone would immediately drive rents up on those properties and likely force displacement of lower income renters from those units. This would occur because added densities and commerical uses allowed under the rezone would drive up land values and taxes accordingly which invariably leads to higher rents.

4. As testimony placed on the record will show, granting this rezone also sets in motion and facilitates future rezones to neighborhood commercial of other areas to the north and northeast of this affected block that now are zoned L-3 and predominantly lower density low income rentals. These rezones would then proceed without adequate 1 for 1 replacement language setting off more displacement and loss of low income units.

This is where the Hearing Examiner (See her Conclusions #12, 17, and 23) has erred in failing to recognize these spillover effects. Considerable testimony is on the record affirming that a rezone of this block would set in motion upzones on surrounding blocks and more displacement without adequate one for one language.

Our recommended 1 for 1 replacement language: two options

As contained in our May 2nd appeal letter, we offered proper language needed to ensure true 1 for 1 replacement on all properties affected by this rezone. Our language also would set the proper precedent should this rezone lead to rezones of blocks north of this proposal.

However, in the event the Council does not favor the more detailed language we proposed in our May 2nd appeal, we would also support the following 1 for 1 replacement language. The language recommended below amends the flawed 1 for 1 language contained in the UPC and UCC joint letter from June 20th . It's especially important to remove any reference in their proposed language allowing them to replace only 18 of approximately three dozen on the east side of the block. Proper language should read as follows:

> *d. One for one replacement of low income housing shall be provided for all existing housing on lots within the rezone area including those on the east* ***and west*** *side of 15th Avenue NE. This one for one replacement obligation is applicable to all properties in the rezone area containing housing units* ~~*on the eastside of 15th Avenue NE containing housing units*~~ ***(whether as dwelling units, housekeeping rooms, dormitories, guest rooms, single room occupancy or other types as defined in the City's Land Use and Housing and Building Maintenance Code)****, that are currently offered at rents affordable to a low income households with annual earnings at or below 50 percent of the area median or that were offered at such rents within the last 2 years. This assumes such units are "affordable" when a household pays no more than 30 percent of their income annually on rent, including utilities. The city shall determine these rent levels based on common annually adjusted federal standards. Such replacement units shall be offered at these rent levels for a minimum of 50 years and shall be functionally equivalent as defined in Section 4.6 of the city's Residential Anti-Displacement and Relocation Assistance Plan adopted by Ordinance 119163. An individual property owner opting not to replace 1 for 1 low income housing they remove, may instead pay an in-lieu of fee to the city in an amount that the city determines would be needed to cause to be built an equal number of functionally equivalent low income units. The city shall dedicate these funds for construction of new low income units and give preference to projects in the area of the rezone or nearby.*

Effectively, we are recommending deletion from UCC/UPC's proposed language the following especially any reference allowing them to replace only 18 of the housing units now located on the east side of the block. We've also deleted language in their proposal relieving UPC of any replacement responsibility at all. All development on both sides of the block under the rezone including UPC must comply with 1 for 1 requirements . Let DPD, based on the above language, go in and determine the total number of units on a given property that a developer shall be required to replace. Delete from their replacement paragraph d:

> ~~*but may be consolidated in the affordable and low income housing project to be constructed on Parcel Nos 8823902200, 8823902185, 8823902175, 8823902180 owned by University Christian Church. Based on the current number of residential units and the current number of bedrooms in those existing residential units, a minimum of 18*~~

~~*residential uits containing a minimum total of 39 bedrooms or 20 percent of the residential units to be constructed on Parcel Nos 8823902200, 8823902185, 8823902175, and 8823902180, whichever is greater, shall be affordable to those with an annual household income that does not exceed fifty percent of the Washington State median income, as computed annually by the City.*~~

Further, the language we have recommend should be affixed both as a condition for all development occurring within the rezoned area and affixed subsequently to PUDAs with each property owner when they proceed with developments under the rezone. As stated in our June 17th response letter, and buttressed by citations in that letter, imposition of the 1 for 1 language we have proposed is legally defensible.

Retain Hearing Examiner's recommendation limiting used on the east side of the block to "primarily residential".

Finally, if the Council grants this rezone, **it would NOT BE APPROPRIATE,** as UPC and UCC request, to remove the Hearing Examiner's recommendation limiting development on the east side of the block to "primarily residential". **The Hearing Examiner did not err, in her conclusion that this rezone "would constitute an encroachment of commercial development into an established lowrise residential area, which is discouraged by SMC 23.34.072"** (See Conclusion #8). This was the basis for her primary recommendation to deny this rezone outright. And it was the basis for her fallback recommendation, should you grant the rezone, i.e., that development should be limited to "primarily residential" on the east side of the block.

The Hearing Examiner indicates, further, that there were too many conflicts with standards for granting such an upzone including conflicts with policies and provisions of the Comp Plan, U-District Neighborhood Plan and General Land Use Code criteria. (See especially her conclusions 11, 14, 15, 16, affirming that and see especially conclusion 26 **where she says, "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.")**

Given her strong sentiments expressed in the preceding quote, we believe it also justifies restricting development to primarily residential on all of the east side and west side of the block, in the event you grant this rezone. Retain this language and extend it to both sides of the block.

In closing:

Neither proponents (or the Hearing Examiner) adequately acknowledge the significant negative impacts on low income housing caused by this rezone both with respect to housing losses that would be set in motion on both sides of the affected block and on blocks immediately north and northeast of the affected block. The record is replete with testimony and data indicating that a redesignation of this block from L3 to commercial zoning without a true 1 for 1 replacement requirement threatens both the existing lower

density character of this block and surrounding blocks and thus also the affordability of existing rental housing in this area.

Further, as we explain in our June 17th response in in our appeal, our city is on sound legal footing to require such 1 for 1 "low income" housing replacement as a condition for this rezone. Apparently the Hearing Examiner agrees or she would not have recommended it applied to UCC properties. Such 1 for 1 replacement language and at comparable rent levels already is in the land use code for midrise and highrise residential zones, and in locations of the code related to institutional expansion, as well as in numerous other policies in the Comp plan and neighborhood plans of the city (see our exhibits attached to our appeal where we cite this material).

Also see especially WAC 365-196-870 Affordable housing incentives including especially excerpts which read.

> *(b) Counties and cities may establish an incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations.*

And,

> *(c) Counties and cities may choose to offer incentives through development regulations, or through conditions on rezones or permit decisions."*

If the council ignores the Hearing Examiner's primary recommendation to deny and goes ahead anyway to grant this rezone, they must affix 1 for 1 replacement requirements across the entire block. Let's get it right this time.

Sincerely,

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