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BEFORE THE CITY COUNCIL
OF THE CITY OF SEATTLE

In the Matter of an Application of Seattle
University for Approval of a Major Institution
Master Plan

CF 309092
DPD Project No. 3008328
Hearing Examiner File: MUP-12-013(W)

And the Appeal of Ellen Sollod and William
Zosel of a Recommendation by the Hearing
Examiner for the City of Seattle

APPLICANT SEATTLE UNIVERSITY'S
RESPONSE TO APPEAL

I. INTRODUCTION

Seattle University presents for the Council's review and approval a new Major Institution Master Plan ("MIMP"), a document intended to guide the University's physical development for the next 20 years and beyond. The Citizen's Advisory Committee ("CAC") thoroughly vetted the proposed MIMP over a four-year period and, through compromise and negotiation, reached near-complete agreement with DPD and the University. After a two-day hearing, the Hearing Examiner issued a thoughtful and reasoned analysis of the MIMP, recommending that the Council adopt the MIMP subject to the conditions offered by DPD and agreed to by the University. With one minor exception (relating to replacement housing as described below), there is complete agreement on this proposed MIMP among the University, the CAC members (except for the two Appellants), DPD, and the Hearing Examiner.

The record shows that the issues raised in Mr. Zosel's and Ms. Sollod's appeal statement were carefully discussed and evaluated by the CAC, DPD, and the Hearing Examiner. The

APPLICANT SEATTLE UNIVERSITY'S RESPONSE TO APPEAL -

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1 Appellants, both members of the CAC, presented their ideas at several of the 35 CAC meetings
2 occurring during this process. Their contribution and that of the neighbors resulted in compromise
3 positions that protect neighborhood interests. On their appeal points, however, Appellants simply
4 did not prevail in the democratic give-and-take of the CAC process. They issued a minority report
5 (appended to the CAC Report), which DPD and the Hearing Examiner reviewed. The Hearing
6 Examiner recommended against their positions on both factual and legal grounds. Appellants now
7 appeal the Hearing Examiner's recommendations, offering no new reasons why the Council should
8 part company with the CAC, DPD, and the Hearing Examiner.

9 Below, the University responds to Appellants' objections and requests for relief. While the
10 University holds the Appellants in the highest regard and appreciates their dedication to the
11 neighborhood, the University respectfully disagrees with their appeal points. The University
12 respectfully requests that the Council reject the arguments offered in the appeal in favor of the
13 reasoning of the Examiner and DPD, and adopt the MIMP subject to the conditions recommended
14 by each.

15 II. LEGAL AUTHORITY AND ARGUMENT

16 Appellants' arguments should not persuade the Council to reject the Hearing Examiner's
17 decision for three reasons. First, contrary to Appellants' assertion, the MIMP does concentrate
18 future development within the existing campus and does limit MIO expansions. Second, Appellants
19 did not establish error in DPD's point-by-point analysis of the rezone criteria. Finally, Appellants
20 did not offer argument and cannot point to facts that support their various requests for relief. Below,
21 the University responds point by point to Appellants' objections and requests for relief.

22 A. Responding to Appellants' First Objection: The MIMP Complies with Code, and no 23 Reasonable Alternatives Remain Within the Existing Campus

24 Appellants first object that the MIMP does not further the goals of the Land Use Code to
25 encourage concentration of institutional development on existing campuses and minimize MIO
26 expansion:

1 The recommendation of the Director of DPD is in violation of the Major Institution
2 Master Plan Land Use Code that explicitly states the purpose and intent to
3 “(e)ncourage the concentration of Major Institution development on existing
4 campuses ...,” SMC 23.69.002C, and to “(d)iscourage the expansion of established
5 major institution boundaries,” SMC 23.69.002E. The proposed MIMP of Seattle
University, recommended for approval by the Director, includes expansion of
boundaries and expansion of development standards.^{1]} Reasonable alternatives for
future development exist without the boundary expansion and development
standards expansion recommended by the Director of DPD.

6 Appeal at ¶ 4. This objection lacks support for two reasons, discussed in more detail below. First,
7 the record demonstrates that it is factually incorrect. The proposed MIMP does concentrate future
8 development within the existing campus and minimizes expansion of the MIO. Second, the
9 Appellants listed to the Hearing Examiner the “reasonable alternatives for future development”—
10 every site they felt could accommodate the University’s growth. At the hearing, the University
11 explained why each proffered site could not be developed as Appellants anticipated. Appellants’
12 list and the University’s response are set forth below.

13 **1. The MIMP Concentrates Development on the Existing Campus and Limits**
14 **MIO Expansion**

15 In keeping with the policies of the Major Institutions Code, every development project
16 identified in the MIMP is within the current MIO, and the total proposed expansion of MIO area
17 is less than five percent.² With this minimal expansion, the MIMP would accommodate more
18 than double the current campus building floor area and a 36% increase in student population.
19 The Examiner correctly concluded that this combination complies with the MIO policies cited by
20 Appellants.

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23 ¹ Just as they did before the Hearing Examiner, Appellants conflate expansion of MIO boundaries (i.e., lateral
24 expansion) with altered development standards that allow larger development within the existing MIO boundaries
25 (i.e., vertical expansion). The plain language of the Major Institutions Code encourages limitation only to
26 expansions of the MIO boundary, and not, for example, height standards. In fact, the Major Institutions Code
actually encourages vertical expansion, allowing institutions to set taller height limits than otherwise allowed by the
underlying zoning. Otherwise, there would be no way to accommodate institutional growth within MIO boundaries.

² See MIMP at 42-49 (proposed and potential development); 38-39 (proposed MIO boundary expansions).

1 **2. No Reasonable Development Alternatives Exist Within the MIO**

2 Prior to and during the hearing, Appellants listed and discussed the sites they believed
3 could provide the University with additional development capacity in such an amount that no
4 boundary expansions or increases in heights would be necessary east of 12th. However, the
5 University addressed each one, demonstrating why none would work as Appellants had hoped.
6 The Appeal Statement does not offer any new information that would cast doubt on the
7 University's testimony and evidence, which was un-rebutted at the hearing.

8 At the hearing, Appellants discussed three sites not identified in the MIMP as potential
9 development sites that Appellants alleged could accommodate campus growth. *See* Exhibit 26
10 (Shell gasoline station at 12th and Cherry, housing at Broadway and Jefferson, and lot at the
11 southeast corner of Broadway and Columbia). **The University does not own two of these three**
12 **sites and it acquired the third site only recently, after the MIMP was drafted.** As campus
13 planning expert Brodie Bain testified,³ it is unwise to plan for development on properties the
14 University does not own. SU recently acquired the property at Broadway and Columbia, Site A
15 on Exhibit 26. Nevertheless, this site is small, and as Ms. Bain testified, a financially and
16 functionally feasible institutional development site generally requires more lot area than is
17 available at the Broadway and Columbia site. An alley vacation could address the problem, but,
18 as the University's Robert Schwartz testified,⁴ the conditions on the alley vacation at that
19 location may not be satisfied for years, if ever.⁵

20
21
22 ³ Ms. Bain is an architect and planner with 24 years of experience in campus planning, programming, utilization
23 studies, site planning, and pre-designs for campuses, including 18 years focused almost exclusively on higher
education. Ex. 3.

24 ⁴ Mr. Schwartz, the University's Associate Vice President for Facilities, has worked in construction for twenty
years. Ex. 25.

25 ⁵ Among the more difficult conditions is the University's agreement (established with CAC input during this MIMP
26 process) not to seek vacation until all adjacent property owners, including the Kidney Center Northwest, agree to the
vacation.

1 Prior to the hearing, Appellants submitted a document, entitled "Development
2 Alternatives Not Considered by EIS," in which they listed other sites they felt could be
3 developed more intensely. Contrary to Appellants' contentions, all of these sites are either
4 already identified for development or could not meet the University's development needs. The
5 list below includes in **boldface** the site identified by Appellants, followed by an explanation of
6 why Appellants' assertions regarding the development capacity of the sites were mistaken:

- 7 i) **12th Avenue between E Spring and E Marion:** Already identified for a 95,000
8 SF, 105' tall structure (Project #202). The rest of this block contains the recently
9 renovated (and popular with the community) Lee Center for the Arts, as well as a
10 surface parking lot identified as future structured parking under new open space
11 (Project #304).
- 12 ii) **Madison between 11th and 12th:** Already identified for a 75,000 SF structure at
13 105' height in the long term (Project #307).
- 14 iii) **E Madison and 12th Avenue:** Already identified for a 55,000 SF structure at
15 105' height in the near term (Project #106).
- 16 iv) **The Shell Station,** addressed above, not owned by the University.
- 17 v) **Broadway and Columbia,** addressed above, recently acquired but not feasible
18 due to lot size constraints.
- 19 vi) **All sites within the MIO along Broadway:** The MIMP identifies several for
20 development, including project #206 (350,000 SF at 160') and Project #308
21 (discussed above). SU does not own the Kidney Center, nor does it own property
22 on Broadway south of E James.
- 23 vii) **Developing to the height limit on all sites west of 12th Avenue:** As Ms. Bain
24 testified, the allowed height limits are not necessarily intended to accommodate
25 buildings. University campuses require open space and architectural features,
26 such as clock towers. However, academic buildings generally should not exceed
four stories because they rely on elevators for student movement between classes
which is discouraged in campus planning. Also, building above roughly 4-5
stories requires a more expensive construction type.
- viii) **13th Avenue between E Columbia and E Marion:** The University owns only a
portion of one of the five lots on the block. That portion is currently in functional
student housing, and SU expects that to be the case for some time.

Finally, one of Appellants' witnesses discussed three other sites that the MIMP did
identify for development, but which he felt could be developed more intensely. Project #201, at
Columbia and [vacated] 10th, is currently slated for a 100,000 SF academic building at 65' of

1 height in the MIO-105 zone. Ms. Bain's un-rebutted testimony established that academic
2 buildings generally should not exceed four or five stories, as discussed above. Project #204, at
3 12th and Marion, is currently planned for 120,000 SF at 75', also in the MIO-105 zone. Once
4 again, good campus planning restricts the height of this academic structure. In addition, the
5 testimony established that building taller structures requires the use of steel-and-concrete
6 construction rather than the "five over two" or "five over one" technique of wood-frame
7 construction over one or two concrete stories, which makes the structures markedly more
8 expensive. Finally, project #308 at Broadway and Madison is planned for 100,000 SF at 65',
9 within the MIO-160 zone. Ms. Bain testified that building to 160' height may not make sense at
10 this highly visible and heavily traveled intersection. It is already elevated above the rest of
11 campus, so a taller building would dominate its surroundings, including a large open space that
12 surrounds the 45' tall administration building to the east.

13 In short, although the Appeal Statement asserts that reasonable development alternatives
14 exist, the overwhelming weight of the evidence presented at the hearing established that there are
15 constraints on development capacity west of 12th, and the Appellants' proposed alternatives do
16 not exist. The record supports the Examiner's recommendations.

17 **B. Response to Objection #2: Appellants Have Not Stated a Challenge to Rezone Criteria**
18 Appellants allege:

19 The Decision of the Director as recommended for approval by the Hearing Examiner
20 violates the standards for the granting of rezones.

21 Appeal Statement at ¶ 4. We assume that what Appellants mean by this allegation is that the MIMP
22 violates the rezone criteria of the code, since that is what they alleged to the Hearing Examiner. The
23 rezone criteria are listed at SMC 23.34.008 (general rezone criteria) and .124 (major institution
24 overlay rezone criteria). Appellants' allegation is not supported by the analysis or the facts in the
25 record.
26

1 DPD's analysis of the proposal's compliance with rezone criteria consumed fourteen single-
2 spaced pages in the Director's Report, which explained how the proposal satisfies each and every
3 criterion. See DPD Report at 42-56. The Hearing Examiner approved this analysis, adopting it by
4 reference at Conclusion ¶ 12. The Appeal Statement does not describe how these analyses failed to
5 address any criterion, and offers the Council no reason to disturb the Examiner's conclusions.⁶

6 **C. The Council Should Deny Appellants' Requests for Relief**

7 Below, the University addresses each of Appellants' requests for relief in the order in which
8 Appellants presented them.

9 **1. Responding to Request for Relief (a) and (b): The MIO Boundary Expansions**
10 **East of 12th Avenue Properly Anticipate Future SU Development Needs**

11 Appellants' first two requested relief items each ask the Council to deny the requested
12 expansion of the University's MIO east of 12th Avenue. Request (a) objects to the expansion to
13 include the Photographic Center,⁷ while Request (b) objects to other expansion areas between 12th
14 and 14th. In total, these MIO expansions would add about 1.2 acres of land, or slightly more than
15 2% of the existing MIO.⁸

16 While the University does not currently have any plans to acquire or develop the
17 Photographic Center site or any other properties within the expansion areas east of 12th, they are the
18 logical locations for future University expansion. Because the MIMP contains no expiration date
19 and is intended to guide campus development for at least twenty years, it makes sense to expand the
20 MIO at this time to allow for the possibility that the University may someday acquire the property
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23 ⁶ In their written closing statement to the Hearing Examiner, Appellants did discuss some of the rezone criteria. The
24 table attached as Appendix A to this Response lists the rezone criteria Appellants cited to the Hearing Examiner, the
Appellants' argument to the Examiner, and the University's response.

25 ⁷ The Photographic Center is a school and art gallery at the northeast corner of 12th and Marion

26 ⁸ The MIMP includes an expansion area of similar size on the west side of campus along Broadway. Appellant does
not object to the western expansion area.

1 within the expansion area and use it to accommodate University growth. Such expansion preserves
2 flexibility for the University's future development.

3 The City has in the past created this type of flexibility by allowing MIO expansion to
4 incorporate target properties for which the University has no immediate development plans or
5 ownership interest. For example, the 1997 MIMP expanded the University's MIO to include the
6 Hospital Laundry at 1300 E Columbia. The University did not then and does not now own the
7 property, and the 1997 MIMP did not identify any development at the site (neither does the
8 proposed MIMP). Nevertheless, the City Council approved the expansion to provide the
9 University with exactly the sort of flexibility it now seeks by expanding the MIO to include the
10 Photographic Center.

11 This topic was discussed extensively before the CAC, which approved the expansions. As
12 the Examiner wrote:

13 The minor expansion would remove the irregular edge that currently exists and
14 would provide opportunities for improvements in edge conditions. The many
15 recommended conditions in the DPD report appropriately balance the University's
need for the minor expansion with protection of the residential edge and pedestrian
environments east of 12th Avenue

16 Conclusion 4. The appeal statement offers no explanation regarding why this analysis is
17 incorrect.

18 The University views the Photographic Center site as critical to eventual campus
19 development. It sits at the northeast corner of the intersection of 12th and Marion, the main point
20 of entry to the campus. The expansion area that includes the Photographic Center was originally
21 slated to include the entire block of 12th Avenue between Marion and Spring Streets, but in
22 response to public comment, the University scaled it back to the single site at the northeast corner of
23 the intersection. The University currently owns the other three corners, all of which are already
24 within the MIO. Bringing this fourth corner within the MIO preserves the possibility that, if the
25 University eventually acquires the Photographic Center site at some point within the life of the
26

1 MIMP, it can develop to the standards set out in the MIMP and use that corner to help reinforce the
2 entrance to the University.

3 The expansion to include properties east of the Photographic Center along Marion similarly
4 preserves the possibility of University development that responds to market opportunities. The
5 University already owns some property within this expansion area—five out of the six Logan Court
6 townhomes on the south side of Marion. The MIMP does not identify this site, or any other portion
7 of the expansion areas, for future development. Nevertheless, as with the Photographic site, this
8 area is a logical location for eventual institutional expansion.

9 The appeal statement does not establish that the Examiner's conclusions regarding
10 expansion were incorrect. There is simply no justification in the record for abandoning the
11 Examiner's analysis. The challenged expansion area adds only 1.2% of the total MIO area
12 (compared to the development program, which will more than double campus building area) and
13 includes no identified proposed or potential development projects. This complies with the
14 directive of the Code of concentrating development within current MIOs and discouraging
15 expansion. The University respectfully requests that the Council reject Appellants' position.

16 **2. Responding to Request (c): The Proposed Development Standards at the 1300**
17 **and 1313 E Columbia Sites Properly Balance Institutional Needs with**
Neighborhood Concerns

18 Appellants' Request (c) addresses development standards—specifically the allowable
19 building envelopes—at the 1300 and 1313 E Columbia sites (the Hospital Laundry and the Coca-
20 Cola building, respectively). These sites border 14th Avenue, which at that location marks the
21 eastern boundary of the MIO. Across 14th Avenue is property zoned Lowrise multifamily,
22 currently in single family use. Appellants ask the Council to either deny the changes or remand for
23 additional information or proposals.

24 The question of development standards for these sites generated the most discussion and the
25 most compromise of any single topic the CAC addressed. *See Findings 55-56; Conclusions 6-9.*
26 As the record demonstrates, the University greatly reduced its proposed building envelopes in

1 response to neighborhood concerns.⁹ The University initially proposed a significantly larger
2 building envelope—65-foot height limits with no setbacks.¹⁰ After hearing neighborhood and CAC
3 concerns, the University proposed 10-foot ground-level setbacks, then 15-foot ground-level
4 setbacks combined with 25-foot upper-level setbacks. Just prior to “final” MIMP approval, the
5 CAC approved the 15-foot ground-level/40-foot upper-level setbacks eventually included in the
6 final MIMP. After final MIMP publication, however, the neighborhood proposed yet greater upper-
7 level setbacks—120 feet on the east side of the two sites and on the north side of the 1300 block. In
8 response, SU proposed an 80-foot upper-level setback at the 1313 site. At the 1300 site, SU
9 proposed upper-level setbacks of 60 feet on the eastern side and 40 feet on the north. The CAC
10 voted to approve these building envelopes. These concessions cost the University a significant
11 amount of hoped-for program space, but the University was (and remains) committed to them.

12 The un-rebutted evidence at the hearing demonstrated that the CAC-approved building
13 envelopes would create minimal, if any, impacts on the neighborhood when compared to the
14 development capacity of the underlying zoning. *See* Conclusion 8. As the Hearing Examiner
15 noted, the relevant comparison is not between current, as-built conditions and the new, agreed-
16 upon zoning envelope, as Appellants appear to presume. *See* Conclusion 6. Rather, the relevant
17 comparison is between the building envelopes allowed by the underlying zoning and those
18 allowed under the compromise. *See* Conclusion 8. The University’s evidence demonstrated that,
19 from the sidewalk on the east side of 14th or from the first floor of the houses uphill across 14th,
20 a hypothetical building constructed to the fullest extent of the agreed-upon building envelope at
21 1313 would not be visible behind a hypothetical building constructed to the fullest extent
22 allowed by the underlying zoning, and only the top few inches would be visible at 1300. *See*

24 ⁹ *See* Testimony of Brodie Bain (explaining compromise); Exhibit 4 (graphic depictions of proposed setbacks
25 through the years).

26 ¹⁰ The underlying zoning would allow wall heights of 36-46 feet with minimal (or no) setbacks. *See* SMC
23.45.514.

1 Exhibit 23. The University also demonstrated that the increased shadow impacts were similarly
2 minimal or non-existent. *Id.* On the strength of this evidence and her own expertise in campus
3 master planning, Ms. Bain testified that the new building envelopes would produce (a) no impact
4 to neighbors of 1313 E Columbia and (b) only insignificant impact to neighbors of 1300 E
5 Columbia. No meaningful response was presented to this evidence.

6 There is no reason for the Council to undo all the work that went into the compromise
7 building envelopes at the 1300 and 1313 sites. As the Examiner concluded, they properly balance
8 the University's need for expansion against impacts to the neighborhood. No evidence in the record
9 would support either an outright rejection of the development standards or a remand.

10 **3. Responding to Request (d): The Housing Replacement Condition Properly**
11 **Implements Code Requirements**

12 In Request (d), Appellants ask the Council to impose significant new housing replacement
13 conditions:

14 Order the inclusion in the Major Institution Master Plan a requirement that, before
15 Seattle University may develop or **occupy for any use** any structure **within the**
16 **boundary of the 12th Avenue Urban Village** on a site that contains a residential
17 use or a site that is zoned for residential uses, the University must construct
housing **for non-university use** to replace the housing to be displaced or the
housing development potential to be displaced.

18 Appeal Statement at ¶ 5.d (emphasis added).

19 Hearing Examiner's Condition 47—proposed by DPD and agreed upon by the University—
20 requires the University to replace housing in MIO expansion areas when it is (a) demolished or (b)
21 converted to non-residential major institution uses. Condition 47 leaves for project-level permitting
22 the question of whether institutional housing (e.g., faculty/staff or student housing) can be
23 considered “comparable” replacement housing. The CAC, by contrast, recommended replacement
24 even if the University retains the existing housing in residential institutional uses, expressly
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1 disallowing student housing to be considered “comparable.” Recommendation 19.¹¹ Concluding
2 that the DPD condition found support in the Code, the Examiner adopted Condition 47 unchanged.
3 Examiner’s Conclusion 13.

4 Appellants now ask the Council not only to reach the opposite conclusion, but to go even
5 farther than the CAC would have. Appellants request that the University construct housing to
6 replace both housing and “housing development potential” lost to University use or development
7 anywhere within the 12th Avenue Urban Village (not just MIO expansion areas). Appellants’
8 request would require the University to expand, rather than simply preserve, the City’s housing
9 stock. These requests exceed the requirements of City code.

10 Condition 47, similar to the Code provision it implements, pertains only to replacement
11 of housing within MIO expansion areas and requires no replacement of existing structures that
12 remain in residential institutional use. The Code reads:

13 **New or expanded boundaries** shall not be permitted where they would result in
14 the demolition of structures with residential uses or change of use of those
15 structures to **non-residential** major institution uses unless **comparable**
replacement is proposed to maintain the housing stock of the city.

16 SMC 23.34.124.B.7 (emphasis added). The plain language of this Code section reveals its
17 scope: housing in MIO expansion areas. In contrast, Appellant’s request would require housing
18 replacement anywhere within the MIO (indeed, anywhere within the 12th Avenue Urban
19 Village).¹² Additionally, under the Code’s plain language, if an institution acquires a dwelling
20 unit in an MIO expansion area and decides to rent it to faculty, staff, or students—a residential
21 major institution use—there is no need to also “replace” it. Appellants’ request, however, would
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23 ¹¹ These represented the only points of disagreement between the University and its CAC. The University, the CAC,
24 and DPD reached agreement on every other point presented in the MIMP, the DPD Report, and the CAC Report.

25 ¹² Although Appellants frame their request as requiring replacement anywhere within the 12th Avenue Urban
26 Village, which is larger than the MIO, practically speaking, the request is limited to the MIO. SU could not
demolish housing outside of the MIO but within the 12th Avenue Urban Village because major institutions are
prohibited from demolishing housing outside, but within 2,500 feet of, their MIO without the approval of an adopted
MIMP. SMC 23.69.022.A.3. The proposed MIMP does not identify any projects outside of the MIO.

1 require SU to construct replacement housing even if the University retains existing residential
2 structures in residential use. As the Examiner concluded, the law does not support these
3 propositions.

4 A condition requiring replacement of lost housing development potential—such as that
5 requested by Appellants—goes well beyond the Code requirements.¹³ Nothing in the Code
6 requires major institutions to “replace” housing that never existed. The parking lot east of the
7 Photographic Center (north side of Marion, mid-block between 12th and 13th) provides an
8 example. Were the University to acquire and develop this property, the loss of this use would
9 properly be analyzed as a loss of parking, not a loss of the housing that could have replaced the
10 parking. Requiring the University to construct additional housing to compensate for lost
11 potential cannot qualify as “comparable replacement” under any reasonable interpretation of the
12 phrase.

13 A necessary extension of Appellants’ argument regarding institutional uses is that student
14 housing can never constitute “comparable replacement” housing, a position that lacks support in law
15 or logic. Both the SMC and Condition 47 are silent on the question, and the Hearing Examiner
16 expressly rejected such a broad reading of the Code. Conclusion 13. Like the section of the SMC
17 it implements, Condition 47 intentionally does not clarify what sort of housing would constitute
18 “comparable replacement” housing. By leaving the question unaddressed in the Code, the
19 Council expressed its legislative intent to allow DPD to decide on a case-by-case, project-level
20 basis what constitutes “comparable replacement” housing. Condition 47 reflects an
21 understanding of the usefulness of such flexibility in a master planning document such as the
22 MIMP. Appellants ask the Council to limit the type of housing that DPD could consider
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25 ¹³ Indeed, a condition requiring the University to replace housing that never existed would likely violate the
26 University’s rights under both state statute (such as RCW 82.02.020) and the state and federal constitutions (the
takings clauses of the 5th Amendment to the Federal Constitution and Art. 1, § 16 of the State Constitution).

1 “comparable,” but nothing in their appeal should convince the Council (in its quasi-judicial
2 capacity) to remove flexibility it itself created in its legislative wisdom.

3 As the University of Washington’s Rob Lubin testified at the hearing, student housing
4 provides myriad benefits to the community and actually increases the housing stock of the City.
5 Mr. Lubin described his experience with similar student housing expansions at the University of
6 Washington, where the UW saw density increase fourfold, that is, the UW housed four students
7 for every dwelling unit it demolished. When these students move into university housing, they
8 vacate other housing in the area. Because of these benefits and many more, there is no reason to
9 prohibit, at the non-project stage, the use of student housing as “comparable replacement”
10 housing.

11 Acting in its quasi-judicial capacity, the Council cannot excise the phrase “non-
12 residential” from the Code, nor can it conclude that the Code would require housing replacement
13 outside of MIO expansion areas. Sound policy requires the determination of what constitutes
14 “comparable replacement” housing to be left for the project review stage. The Council should
15 adopt Condition 47 unchanged.

16 **4. Responding to Request (e): The University will Comply with all Public Notice**
17 **Requirements of the SMC**

18 Finally, for the first time on appeal, Appellants request that the Council adopt a condition
19 requiring “advance notice” of development projects:

20 Order inclusion in a Seattle University Major Institution Master Plan measures that
21 provide advance notice of development plans in a time and manner adequate to serve
the goals and purposes of the Major Institution Overlay provisions of the Seattle
Municipal Code.

22 Appeal Statement at ¶ 6(e). The issue of notice to the public was not raised before the Hearing
23 Examiner, so the record is devoid of facts which could support the addition of a condition
24 mandating additional public notice requirements.

25 The Seattle Municipal Code carries with it a number of public notice requirements for
26 project permitting, and given the lack of facts in the record on this point, Appellants cannot

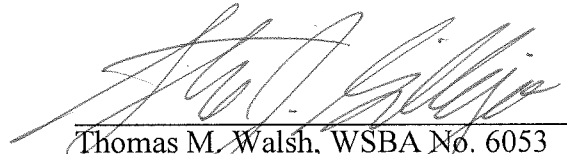
1 demonstrate that these notice requirements fail in their purpose. In this void of factual support,
2 Appellants cannot prove that the current requirements are inadequate or that the University will not
3 comply with them in the absence of a MIMP condition. The University has no intention of violating
4 the public notice requirements of the SMC, and there is no reason to impose additional conditions.

5 III. CONCLUSION

6 The University respectfully requests that the Council follow the Examiner's
7 recommendations and adopt the MIMP subject to the conditions contained in the DPD Report.

8 DATED this 26th day of July, 2012.

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**APPENDIX A: UNIVERSITY RESPONSE TO APPELLANTS' WRITTEN CLOSING
ARGUMENTS REGARDING COMPLIANCE WITH REZONE CRITERIA**

Rezone Criteria (SMC)	Appellants' Written Closing Arguments	University Response and DPD Report Citation
23.34.124.B.1: Establishment or modification of boundaries shall take account of the holding capacity of the existing campus and the potential for new development with and without a boundary expansion.	DPD Report did not analyze holding capacity or potential for new development without expansion.	No holding capacity in existing campus: Appellants' proposed alternative development sites do not have the capacity Appellants allege. Also, all development under current MIMP already completed. DPD Report addressed criterion at 52.
23.34.124.B.5, .6: Preferred locations for boundaries shall be streets, alleys or other public rights-of-way. Configuration of platted lot lines, size of parcels, block orientation and street layout shall also be considered. 6. Selection of boundaries should emphasize physical features that create natural edges such as topographic changes, shorelines, freeways, arterials, changes in street layout and block orientation, and large public facilities, land areas or open spaces, or green spaces.	Boundary on Marion does not follow right-of-way or natural features	Proposed boundary follows platted lot lines, complying with plain language of Code. Current boundary does not follow right-of-way, so no difference. DPD Report addressed at 53-54, noting all MIO boundaries are on rights-of-way or platted lot lines. No distinguishing physical features create natural edges in area
23.34.124.C.1: Increases to height limits may be considered where it is desirable to limit MIO district boundary by expansion.	No justification for height increase at Photographic Center.	Height increase is minimal and in line with most other heights along 12th Avenue. Boundary expansion is minimal when considered in light of the increases in student counts and floor area. DPD Report addressed at 55.
23.24.124.C.2: Height limits at the district boundary shall be compatible with those in the	Photographic Center will be only property over 40' for	Inaccurate statement. MIMP proposes 65' height limits for length of 12th Avenue. Also,

adjacent areas.	blocks in either direction 65' heights at 1300/1313 not compatible with neighboring residential heights	property one block north has 65' heights. 65' is "compatible" with the limited area of 40' heights north of Photographic Center. Tiered upper-level setbacks at 1300/1313 E Columbia make limits as compatible with surrounding LR zoning as the current height limits of the underlying zone. DPD Report addressed at 55.
23.34.124.C.3: Transitional height limits shall be provided wherever feasible when the maximum permitted height within the overlay district is significantly higher than permitted in areas adjoining the major institution campus.	No transitional height between Photographic Center and adjacent site. No transition provided at 1300/1313 E Columbia sites	65' height provides transition from 105' and 160' heights further west. No need to provide additional transition because 65' is not "significantly higher" than 40'. Tiered upper-level setbacks at 1300/1313 provide adequate transition. See section drawing at Ex. 26. DPD Report addressed at 55.
23.24.009.D (height limits in commercial or industrial zones)	Directive language requires compatible height limits and gradual transitions in height, scale, and level of activity.	Section is not applicable: MIMP sets height limits for Major Institution Overlay, not for underlying commercial zoning.
23.34.008.E.3.b: Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.	MIMP calls for non-residential uses at 1300/1313 E Columbia that do not comply with criteria.	Section is not applicable: 1300/1313 are not MIO expansion areas; they are already within the existing MIO. DPD Report addressed at 47.
23.34.008.E.1: The impact of more intensive zones on less	Non-residential uses on 1300 E Columbia are prohibited absent	This is a pre-existing situation not altered by the MIMP.

intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.	a buffer to the residential uses to the north.	Commercial use currently operating at 1300 E Columbia has no buffer to properties to the north. DPD Report addressed at 46-47.
23.34.008.D.2: Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.	Proposal fails to recognize that 12th Avenue Plan calls for rezone of 1300/1313 E Columbia from commercial to lowrise to promote residential development.	MIMP took 12th Avenue Plan into account and does not change zoning. Residential is one of the potential uses at 1300/1313 sites. DPD Report evaluated specific 12th Ave Plan criteria at 44-45.

1 **CERTIFICATE OF SERVICE**

2 I, Helen M. Stubbert, certify that on the 26th day of July, 2012, I caused to be served, by
3 messenger, on each of the following parties, a copy of the foregoing Applicant Seattle
4 University's Response of Appeal:

5 Lisa Rutzick
6 City of Seattle, DPD
7 700 - 5th Ave., Ste. 2000
8 Seattle WA 98124

William Zosel and Ellen Sollod
910 - 13th Ave.
Seattle WA 98122

9 DATED this 25th day of July, 2012

10 
11 _____
12 Helen M. Stubbert, Legal Assistant