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BEFORE THE CITY OF SEATTLE
OFFICE OF HEARING EXAMINER

LAURELHURST COMMUNITY CLUB,

Appellant,

v.

DIRECTOR, SEATTLE DEPARTMENT OF
PLANNING AND DEVELOPMENT

Respondent.

CASE NO.

NOTICE OF APPEAL
(EIS Adequacy)

1. APPELLANT/AUTHORIZED REPRESENTATIVE INFORMATION

The Appellant is Laurelhurst Community Club (“LCC”), a Washington nonprofit corporation whose Registered Agent and Registered Office are located at 1000 Second Avenue, Suite 3130, Seattle, WA 98104. LCC’s authorized representative/attorney is Peter Eglick of Eglick Kiker Whited PLLC. Eglick Kiker Whited PLLC is located at 1000 Second Avenue, Suite 3130, Seattle, WA 98104, telephone (206) 441-1069, fax (206) 441-1089, e-mail eglick@ekwlaw.com.

2. DECISION BEING APPEALED

LCC appeals pursuant to SEPA, WAC 197-11, and coordinate provisions of the



1 Seattle Municipal Code, the adequacy of the Seattle Children’s Hospital Major Institution
2 Master Plan Final Environmental Impact Statement (“FEIS”) issued by the Seattle
3 Department of Planning and Development (“Department”, “DPD”) on November 10, 2008.
4 By notice dated November 10, 2008, the Department announced that, “Pursuant to SMC
5 25.05.680 and SMC 23.76.022 any appeals of the adequacy of the final EIS shall be
6 commenced by filing a notice of appeal with the Office of the Hearing Examiner no later than
7 five (5:00) p.m. the fourteenth day following the filing of the FEIS in the SEPA Public
8 Information center or publication of his notice in the City’s official newspaper, whichever is
9 later.”¹

11 **3. APPEAL INFORMATION**

12 **A. Standing**

13 Since 1922 the Laurelhurst Community Club, originally formed as the Laurelhurst
14 Improvement Club, has represented the interests of the Laurelhurst community, including in
15 matters concerning land use, development, and the welfare of the community. LCC’s standing
16 to represent the interests of the community’s 2800 households and businesses has been
17 previously recognized by the Seattle Hearing Examiner in proceedings concerning earlier
18 Children’s Hospital (“Children’s,” “SCH”) proposals, extending back over two decades. LCC
19 members will be directly and substantially impacted by the outcome of the current Children’s
20 Hospital SEPA and Master Plan proceedings. The hospital’s proposal to more than double in
21 size, drastically expand major institution boundaries, and add functions that State and County
22 policy and other health care institutions and professionals suggest should be provided
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26 ¹ While LCC submits this appeal now pursuant to the City’s notice, it reserves all rights with regard to DPD’s attempt to cut off SEPA appeal rights now, weeks before the Director’s decision and recommendation.

1 elsewhere would push Laurelhurst beyond the tipping point of neighborhood viability. The
2 interest of Laurelhurst residents, LCC members, in the adequacy of the City's SEPA review
3 of Children's proposals is therefore immediate and urgent. LCC has sought to vindicate such
4 interest by engaging experts and submitting detailed, constructive comments on the EIS
5 drafts. Unfortunately, the City has in key instances failed to address obvious, fundamental
6 shortcomings identified by LCC and other commentators in the draft SEPA documents,
7 necessitating this appeal.
8

9 **B. Grounds**

10 1. "Health Care Needs/Public Benefit." Children's Master Plan proposal is very
11 unusual. It does not represent a typical plan for predictable growth within established
12 boundaries and with viable mitigations. It is instead a proposal for establishing another major
13 institution, larger than the very large one that it would join on Children's Laurelhurst campus.
14 A new psychiatric hospital, unprecedented in Washington and for Children's, and contrary to
15 established policy for de-institutionalization, would be established on the site. Vehicle trips
16 would soar to the point that it is impossible to identify realistic, effective mitigation.
17 Longstanding institutional boundaries would be leapfrogged in unprecedented fashion,
18 including across Sand Point Way, a major arterial, and another non-institutional property. The
19 justifications for this ought to be the subject of vigorous, multi-faceted scrutiny by the City.
20 Instead, the FEIS continues DPD's practice, to which LCC has objected, of including in the
21 EIS a one-sided presentation of Children's arguments concerning the purported need for and
22 public benefits of its proposal as well as factually inaccurate information about State permit
23 processes. Yet, when LCC and other commentators have sought to include data and references
24 which lead to a different conclusion, including analyses specifically in line with that required
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1 under state and local regulations and policies, DPD has dismissed such efforts as
2 inappropriate in an EIS context and refused to even respond to them substantively. The result
3 is an EIS that includes for example (in the FEIS Summary) a section entitled “1.1.1 Health
4 Care Needs” presenting Children’s advocacy on need and public benefit while DPD wholly
5 rejects as “outside the scope of the EIS” all non-SCH critique and refutation. Such one-sided
6 selectivity in what topics may be addressed in the EIS renders it inadequate and potentially
7 misleading to decisionmakers who rely on it for full disclosure on the topics presented.
8

9 2. Alternatives. SCH is seeking rezones and boundary expansions that are not part of
10 its current Master Plan and that are beyond the scope of what was reviewed in prior City
11 Master Plan and Comprehensive Plan processes. In these circumstances, SEPA review may
12 not be limited to alternatives based on the applicant’s particular development objectives.
13 WAC 197-11-440 (5)(d). Yet, despite repeated comments by LCC questioning this omission,
14 the EIS has failed to analyze any “build” alternative with less development square footage and
15 hospital beds than those proposed by SCH. All the “build” alternatives that were analyzed in
16 the EIS were based on the same development square footage and hospital beds on and around
17 the existing SCH campus in Laurelhurst, and all have significant adverse impacts. The EIS
18 should have analyzed alternatives that entailed less new development at the Laurelhurst
19 location, and correspondingly less impact on the community with regard to height, bulk and
20 scale, housing, land use, transportation and public services, including but not limited to:
21

- 22 a) An alternative that looked at the existing development (“holding”
23 capacity of SCH’s campus under its existing major institution development
24 standards (an assessment that is required by the Land Use Code for major
25 institution rezones in SMC 23.34.124.B.1);
26

1 b) Alternatives that looked at changes to SCH's existing master plan, but
2 with less development square footage (and MIO height) in Laurelhurst than
3 proposed by SCH; and,

4 c) Alternatives that looked at locating some or all of SCH's proposed
5 square footage and hospital beds at other locations outside Laurelhurst (as
6 allowed by State law) that would reduce impacts and be more appropriate for
7 intense development and more consistent with Seattle's urban village growth
8 strategy.
9

10 3. Benefit of Postponing Implementation of Proposal. The EIS fails to accurately
11 analyze the benefits of postponing implementation of the SCH proposal, including but not
12 limited to those related to reducing the speculative nature and significant impacts of the
13 proposal. See WAC 197-11-440 (5)(c)(vii).

14 4. Housing. The EIS fails to adequately disclose and analyze the full housing impact
15 of the SCH proposal. While the EIS acknowledges a significant adverse impact with respect
16 to the demolition of 136 Laurelon Terrace apartment units, it fails to provide adequate
17 information and analysis regarding purported "replacement" housing proposed in the EIS as
18 mitigation, referring only to a vague plan without full particulars. The EIS fails to describe
19 those characteristics of housing that constitute comparable replacement housing, and offers no
20 analysis of how or if the housing proposed is comparable to the Laurelon Terrace units that
21 SCH proposes to demolish. The EIS also fails to fully disclose and analyze housing impacts
22 that are in addition to those created by the Laurelon Terrace demolition, including but not
23 limited to those related to the major institutional development of the residentially zoned
24 Hartmann property, the acquisition of other residential properties by SCH, and the isolation of
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1 non-SCH residential properties by the development proposals.

2 5. Height, Bulk and Scale. The EIS grossly understates the impacts of the proposed
3 development on the height, bulk, and scale and aesthetic character of Laurelhurst and Bryant,
4 single family low density neighborhoods conspicuously not within urban villages. The
5 following examples, which are not inclusive, illustrate how the EIS fails to adequately
6 disclose, analyze and mitigate the height, bulk, and scale impacts of the development on
7 Laurelhurst and Bryant:

8 a) There is no qualitative assessment of the height, bulk and scale
9 relationship between the massive development proposals and their low density, low
10 scale context (zoned and built), or how this relationship affects the character and
11 livability of the impacted area.

12 b) There is no analysis of the institutional aesthetics of the proposed
13 buildings in relationship to those of its residential surroundings.

14 c) The EIS analysis with respect to goals, policies and rezone criteria
15 related to height, bulk and scale, especially those regarding single family, low
16 intensity development in areas outside of urban villages, is nonexistent or dismissive
17 rather than analytical and informative to decision-makers.

18 d) Areas that have sensitive height, bulk and scale relationships are not
19 included in the before-and-after photo montages that are intended to show such
20 relationships, and some of the included montages fail to accurately reflect the full
21 extent of the impacts.

22 e) The EIS conclusion, conveyed to decisionmakers reviewing the EIS,
23 that significant height, bulk and scale impact is limited to Sand Point Way is
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1 indefensible in light of other, more sensitive development edges that would be
2 impacted by out of scale, incongruent development.

3 f) The before-and-after photos in the EIS omit several locations where
4 significant height, bulk and scale impacts and aesthetic/view impacts would occur.
5 Further, the FEIS explicitly and erroneously limits impact disclosure and analysis on
6 this topic to those impacts that DPD construes as eligible for mitigation directly under
7 Seattle's substantive SEPA policies. In fact, the City's authority to address height,
8 bulk, and scale impacts and its plenary rezone authority apply. Further, even if this
9 were not so, SEPA does not permit nondisclosure of significant impacts simply
10 because there is no discrete code provision to address them: the disclosure and
11 analysis is still required.
12

13 g) The EIS incorrectly states that there would be no impact to designated
14 scenic resources apparently based on the premise that Sand Point Way is not
15 designated as a scenic drive. As acknowledged in the DEIS (p. 3.9-10), the height,
16 bulk and scale impacts of all three growth alternatives with respect to portions of Sand
17 Point Way are significant and unmitigatable. The FEIS attempts to excuse its
18 statement of no impact to scenic resources based on a Seattle SEPA policy that limits
19 view protection to those views from public places listed in "Attachment 1." The
20 statement is made that Attachment 1 lists "Sand Point Park/Beach located at Sand
21 Point Way NE and NE 65th Street" and that no views of the specified features would
22 be obstructed by SCH development. This may or may not be true, but it does not
23 address the designation of the greater part of Sand Point Way as a scenic per the last
24 item of Attachment 1 to the SEPA Policy:
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1 Scenic routes (1) described by Seattle Transportation, Traffic Division
2 Map and by Ordinance 97027, and (2) identified as protected view rights-
3 of-way in the Mayor's April 1987 Open Space Policies Recommendation.
(See Exhibit 1 immediately following for a map of the designated SEPA
4 Scenic Routes described above.)

5 Exhibit 25.05.675 1N SEPA Scenic Routes Map--North Seattle

6 In fact, Sand Point Way NE/NE 45th Street is shown as a “scenic route identified as protected
7 view rights of way . . .” in those Open Space policies.

8 6. Land Use. The EIS fails to adequately disclose, analyze and mitigate significant
9 direct and indirect land use impacts of the proposed development and offers no substantive
10 basis for its conclusion that there would be no or only minor land use impacts. It is devoid of
11 analysis regarding the proposal’s and alternatives’ fundamental inconsistency with Seattle’s
12 urban village growth strategy. It is devoid of analysis regarding the transformation and
13 domination of the area by institutional uses, and the effects this would have on the viability,
14 vitality and livability of the area for non-institutional uses, users and activities – an analysis
15 that is essential for decision-makers. It fails to give appropriate weight or does not address
16 explicit land use requirements, goals and policies that prohibit or strongly discourage
17 boundary expansion and that are protective of small scale, low density residential
18 neighborhoods.

19
20 7. Public Health Services. The EIS fails to adequately disclose, analyze and mitigate
21 the impacts of the proposal on public health services, including hospitals and hospital
22 services. It inappropriately defers this evaluation to process that is outside of SEPA and that
23 is not designed to consider relevant issues and impacts, such as reliable access to hospital
24 facilities, proximity to populations in need, and distribution of facilities in event of regional
25 emergencies. There is no discussion in the EIS regarding the public benefit of and need for
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1 the proposal – a factor that must be considered by decision-makers. There is no discussion
2 regarding the effect of SCH’s proposal on other hospitals in Seattle, the greater Puget Sound
3 area and the state. There is no discussion regarding the proposal’s consistency with state
4 policies that seek to prevent the overbuilding of hospital facilities, and the resulting localized
5 and statewide impacts. This impact evaluation should be included in the EIS discussion of
6 public services, which is defined in Seattle SEPA Policies as including public health services,
7 whether provided by a public agency or private entity. SMC 25.05.675.O.1.
8

9 8. Public Comments Excluded. The FEIS fails to include and respond to all public
10 comments submitted despite the requirements in WAC 197-11-560. Further, by distributing
11 the EIS public comment and response section in an inaccessible format, the City’s FEIS has
12 failed in one of its essential purposes.

13 9. Transportation. The FEIS transportation analysis is inadequate in that:

14 a) It does not provide any real alternatives for reducing and/or mitigating traffic
15 impacts on the neighborhood.

16
17 b) While the FEIS response to comments refers to the ITE Trip Generation
18 Handbook to justify not using square footage or employees as the variable for trip generation,
19 it fails to disclose or explain how the EIS assumptions were reached in light of prescribed
20 ITE steps for “establishment of local trip generation rate or equation” and “Validation of Trip
21 Generation rate.” Per ITE the trip generation per employee would generate over 900 new PM
22 peak hour trips. This as a minimum should have been used in the LOS, and queuing impacts
23 evaluation of the FEIS. Further, despite explicit identification of fundamental data gaps in the
24 DEIS, the actual counts used in the model calibration are still not provided. The response to
25 the DEIS comment request that the data be provided is a statement in the FEIS that the data
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1 will be provided upon request – but without providing the data that was already requested five
2 months ago. This is a fundamental omission in that it prevents critical review of FEIS
3 assertions.

4 c) The FEIS continues to withhold data and analysis necessary to examine its trip
5 projections. For example, the FEIS assumes 1410 daily peak hour trips when the ITE
6 standard would result in 2800.

7 d) There remains a 100% discrepancy in the EIS for critical minor stopped
8 approach volumes. It is these that determine the approach LOS and queuing for Laurelhurst
9 residents. This has not been addressed in the FEIS. Additionally, as the DEIS points out, the
10 SCH expects nearly 600 bicyclist and 1000 public transit pedestrian trips from the Sand Point
11 corridor. This does not appear to have been accounted for in the LOS/Queuing analysis for
12 Sandpoint Way. The EIS analysis of queuing and intersection impacts remains inadequate.

13 e) The FEIS answer did not address the inadequacy of using 1998 concurrency
14 volumes for a 2030 build out year. Nor does it provide data necessary – and requested in
15 DEIS comments -- to knowledgably assess calibration, queuing analysis, or bottlenecks (e.g.
16 on Montlake Boulevard or 45th Street). Therefore, the FEIS off-site analysis continues to
17 underestimate the delay along these corridors and the impacts of the proposal.

18 f) The FEIS cites the City's substantive concurrency standards as excusing
19 failure to provide full analysis and disclosure of concurrency shortfalls. This is erroneous:
20 whether the City's substantive concurrency regulations may or may not require a specific
21 remedy in response, impact disclosure is still required.

22 g) The FEIS relies on a model for trip reduction and a reduction in parking
23 demand without providing the requested data and responses necessary to assess its use and
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1 bases its conclusions on optimistic, speculative assumptions that are not supported by
2 empirical experience to date.

3 h) The FEIS does not address a significant but unacknowledged shortfall in
4 accommodating pedestrian and bicycle use/trips and interrelated shortfalls in Levels of
5 Service.

6 i) The failure of the FEIS to disclose and analyze an actual construction
7 management plan in light of the size and implications of the construction and related vehicle
8 trips (e.g. 140 truck trips per day for a period of years) and related cumulative impacts is a
9 significant deficiency under SEPA.

10 j) The FEIS continues to omit queuing/blocking impacts important to assessment
11 of operation of emergency vehicles.

12 k) The Montlake/45th Street/5 corners intersection LOS is not supported by actual
13 improvements or travel time calibration.

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15 10. Climate Change. The FEIS fails to adequately address the cumulative air and
16 climate change impacts of the proposal.

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18 **C. Relief Requested**

19 As relief Appellant LCC requests that the Examiner:

20 1. Remand the EIS to DPD for preparation of a new draft and, after circulation
21 for public and agency comment, a new final environmental impact statement with instructions
22 to re-issue them in compliance with SEPA, SEPA regulations, and the coordinate provisions
23 of the Seattle Municipal Code.

24 2. Grant such other relief as the Appellant may request or the Examiner deems
25 appropriate.
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1 Respectfully submitted this 24th day of November, 2008.

2 EGLICK KIKER WHITED PLLC

3
4 By _____
5 Peter J. Eglick, WSBA #8809
6 Attorney for Appellant
7 Laurelhurst Community Club
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