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BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of the Application of
SEATTLE CHILDREN'S HOSPITAL
for approval of a Major Institution Master Plan

Hearing Examiner File No. CF 308884
LAURELHURST COMMUNITY CLUB'S
REPLY¹

I. INTRODUCTION

The key land use decision now before Council is whether, under the Code, Children's is entitled to approval of its demand for a tripling in development, and acres of institutional boundary expansions, in one Seattle neighborhood. The Seattle Hearing Examiner answered this question with a carefully considered "No." The Hearing Examiner's August 11, 2009 decision makes it very clear that the law and the Record require denial of Children's uncompromising demand for a tripling of development on its Laurelhurst campus.

¹ Because DPD's arguments are generally cumulative with Children's and/or offer little or no colorable responses to LCC's appeal, this optional Reply will focus on Children's Response. However, along with LCC's Appeal and Response, in doing so, it responds to claims by various other appellants including DPD.



1 Children's September 21 Response tells the Council that approval must be a foregone
2 conclusion because Children's provides a public benefit and there is a need in Washington for
3 pediatric services. It then tells the Council that it should skate by the Examiner's denial
4 decision and proceed directly to consideration of conditions for approval. Neither of these
5 premises are correct.

6 The Examiner's denial decision did not turn on whether pediatric services are needed
7 in the state of Washington. She presumed that there is a need on a statewide basis. Nor did it
8 turn on whether Children's provides a public benefit. What Major Institution worth its salt
9 would not meet the Code's abstract benefit and need tests? But, as the Examiner's
10 professional analysis makes clear, these are the beginning – not the end – of the inquiries
11 under the Code.

12 What Children's omits before the Council is the critical other side of the equation .
13 The Code requires a balancing of the institutional proposal with the:

14 "need to protect the livability and vitality of adjacent neighborhoods"²

15 The Code also repeatedly discourages and penalizes expansion of institutional
16 boundaries. And, it explicitly suggests as an alternative that development occur in satellite
17 locations at least half a mile away. Contrary to Children's Response, claiming greater latitude
18 because it is not "new", these principles apply equally to existing as well as new
19 institutions.³ All major institutions existing at the time of the original 1983 Major Institution
20 Code adoption have had master plans go through City Council, some twice. None in a context
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25 ² This need is called out more than once in the Code. One instance is in SMC 23.69.002.

26 ³ DPD does not make this claim. Nor does Children's cite any cognizable support for this new interpretation of the Major Institutions Code.

1 comparable to that in which Children's exists – low density, non-urban village – have
2 anywhere near the height, bulk and overall development “latitude” that Children's demands.

3 What the Examiner ultimately decided after an exhaustive and searching process was
4 that Children's had not made the case for its all or nothing approach. The extraordinary
5 development necessary to meet an explicitly “statewide” need for pediatric services could not,
6 consistent with the balancing required by the Code, all occur in one residential neighborhood
7 in Seattle – even assuming if really had to be met by Children's alone among all institutions
8 north, south, east, and west in the state of Washington, In doing so, the Examiner pointedly
9 concluded that Children's had tied the process' hands by refusing to allow consideration of
10 development alternatives.
11

12 This all or nothing approach on Children's part – demanding a tripling of development
13 to 2.4 million square feet, all in Laurelhurst, to meet Children's assumption of a statewide
14 need – did not serve either the process or Children's well. Laurelhurst and interested parties
15 long ago pleaded/stated/offered that what is only by comparison a “moderate” expansion of
16 Children's in Laurelhurst – doubling the current development – would gain quick agreement.
17 Children's refused to even discuss such an alternative. Children's gambled that the Major
18 Institutions Code balancing requirement and the explicit Code option for MIMP denial did not
19 apply.
20

21 Even at this stage, in a striking lack of leadership, Children's refuses to contemplate a
22 remand by the Council to address options short of denial. Children's Response Brief to
23 Council takes this approach “over the top.” According to Children's, healthcare will suffer if
24 its MIMP is not approved right now for what it wants, where it wants it and other institutions
25 would be given “a horrible signal.”
26

1 Clearly, Children's believes this signal" argument is its political "money shot" with
2 the Council, and therefore leads with it in the introduction to its Response Brief. However,
3 contrary to what Children's tells the Council, this is not a "policy" decision. Nor is it a matter
4 in which the earlier parochial and political recommendations by the CAC and the Executive
5 have equal weight with the decision issued by the Examiner after an extensive Code-
6 prescribed hearing and review process. Per the Code, they do not.

7
8 Instead, the Council's role is to sit in this matter as a quasi-judicial body to review,
9 specifically, the Examiner's recommendation. Each Councilmember must personally,
10 carefully review the entire Record before the Examiner including the recordings of eight days
11 of hearings and the thousands of pages of exhibits, comments, and other submissions.

12 Per SMC 23.76.056A, unless a material error in the Examiner's decision is proven, the
13 Examiner's decision must stand. Children's threat that upholding the Examiner would send a
14 "signal" to other institutions is not a basis for overturning the Examiner. It is a political
15 argument that has no place in this quasi-judicial land use process.

16
17 Even if Children's resort to a political argument were not off-base, the argument it
18 offers does it no credit. It is not a "horrible signal" for the Council to stand by what the Code
19 says: the Major Institutions Code is not a blank check; context matters; and a balance must be
20 achieved.

21 It would be a "horrible signal" if the Council were to accept Children's premise that,
22 regardless of what the Code says, MIMPs cannot be denied approval no matter how egregious
23 or excessive. What signal would that send to the neighborhoods: that the Code does not
24 mean what it says when it requires a balance and contemplates denial when one is absent?
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1 The only “signal” that should be read into the Examiner’s denial is that Children’s has
2 been unrealistic and inflexible in its demands. Its proposal greatly exceeds and is not typical
3 of other institutions that, like Children’s, are in low density areas outside of urban villages.

4 Not a single major institution outside of an urban village has an MIO district height
5 greater than 105’. Recently adopted master plans for South Seattle Community College
6 (2007) and Seattle Pacific University (2000) show their FAR and lot coverage are much less
7 than Children’s proposal. And when Seattle Pacific University sought to expand its boundary
8 to nearby residential properties, the MIO heights approved in the expanded areas were 37’ and
9 structures were conditioned to comply with the underlying density or height standards to
10 protect the neighborhood and preserve its scale. Ex. 22, at 14-15 and Attachments H and I.

11 Children’s proposed MIO 160 foot height designation would be more than 5 and 6
12 times the maximum zoned 25- and 30-foot heights of surrounding and underlying zones. Its
13 140 foot building height limit would be more than 4½ and 5½ times the maximum zoned 25-
14 and 30-foot heights of surrounding and underlying zones. Children’s current master plan, now
15 in effect, has MIO/building heights that reflect a more appropriate consideration of context.
16 Limits on building width and depth, established in multifamily zones to reduce height, bulk
17 and scale impacts, would be eliminated in Children’s new plan. Children’s proposed lot
18 coverage of 51% is a significant increase over the maximum 35% allowed in the single family
19 zone that underlies the Children’s campus and that is allowed in the current master plan.
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22 Children’s mistakes the Examiner’s good practice for uncertainty when it claims that
23 the Examiner’s listing of fallback conditions is “an admission of uncertainty as to her
24 recommendation of denial.” There is not an iota of “uncertainty” expressed in the Examiner’s
25 decision recommending denial. And, it is in fact common for judges and judicial
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1 decisionmakers to offer alternative findings when rendering a decision that is certain to be
2 appealed. Here, the Examiner knew for a certainty that Children's would appeal because it
3 had not given an inch of ground throughout the proceeding.

4 The Examiner's denial, which she clearly knew would not be welcome, but which she
5 clearly indicated Children's had brought on itself, must be the first and foremost order of
6 business in the Council's review. Remand, fallback conditions, or other remedies are only an
7 appropriate topic if Children's has proven to the Councilmembers, after detailed personal
8 review of the entire Record, that the Examiner's denial recommendation was in error.
9 Children's has failed in this burden of proof.
10

11 II. **REPLY IN SUPPORT OF LCC APPEALS OF EXAMINER FALLBACK**
12 **CONDITIONS**

13
14 Children's pretends that it disagrees with little in the Examiner's fallback conditions in
15 contrast to LCC. In particular Children's suggests that it only "disagrees" with three Examiner
16 conditions. The rest of its change requests, Children's says, are "clarifications,," in contrast it
17 says with LCC's greater number of "disagreements". LCC has of course proposed that the
18 Council modify several of the Examiner's fallback conditions and LCC has given reasoned
19 Record-based explanations as to why. Arguing, as Children's does, about whether proposed
20 changes are mere "clarifications" (the label Children's applies to at least half of its
21 complaints) is pointless. What is important for the Council to know is that LCC believes that
22 its proposed changes are compelled by the Record and the Code.
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25 A. **If the Council Were to Reverse the Hearing Examiner's Denial**
26 **Recommendation, Any Resulting Master Plan Approval Should Be**
Conditioned, as was Urged by LCC Throughout This Master Plan

1 Process, On New Development of 704,000 Gross Square Feet Not
2 Including Parking Garages.

3 1. Children's Response Incorrectly States What LCC Has Proposed.

4 Children's Response "frames" this issue by continuing its practice of playing with the
5 numbers: it now claims that LCC has demanded that Children's be limited to new
6 development of "654,000 gross square feet." This is incorrect. LCC has consistently proposed
7 that Children's be allowed to virtually double by developing an additional, approximately
8 708,000 square feet based on the Hearing Examiner's calculations, or 704,000 square feet
9 based on LCC's calculations – not including parking.

10 This would result in total overall Children's development of 1.554 million square feet,
11 compared to the current approximately 850,000 square feet not including parking. See LCC
12 Appeal, p. 17, 36.

13 Here is what LCC actually said in its Appeal:

14
15 In light of the foregoing, if the Council were to reverse the Hearing Examiner's
16 denial recommendation, any resulting Master Plan approval should be
17 conditioned, as was urged by LCC throughout this master plan process, on new
18 development of no more than 704,000 gross square feet. [This includes above-
and-below square footage, including mechanical and circulation areas, but not
including parking garages.]

19 This "reduced" amount is still nearly 3 times the amount of new development that
20 was approved in Children's last Master Plan and would almost double Children's
21 current facility. As such, it is still a significant expansion that will have
significant impacts.

22 Under this alternative, the maximum allowable square footage within the MIO
23 (full build out of new projects combined with current actual development of
24 850,000 square feet)⁴ would be 1.554 million gross square feet.

25
26 ⁴ The current MIMP allows an overall gross square footage of 900,000 but Children's has only developed
approximately 850,000.

1 This overall square footage would accommodate all of the development square footage
2 that Children's has indicated it actually "plans" to build: its new 262-bed Bed Unit North;
3 plus its speculative, "potential" Phase 2 Ambulatory Expansion; and the speculative,
4 structured parking that was proposed to support this development (1100 parking spaces).

5 **2. Total Square Footage for Children's Must Include and Count Mechanical**
6 **Space**

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8 In its Response brief (beginning on page 5 at 13), Children's describes Hearing
9 Examiner fallback Condition 1, which addresses the overall square footage that should be
10 approved for Children's master plan, as allowing "an additional 1,500,000 square feet of
11 development in the proposed Master Plan (i.e., total campus development of 2,400,000). . .
12 The City Council should incorporate the Examiner's proposed Condition 1 and approve
13 Children's Master Plan for the requested 1,500,000 additional developable square feet." This
14 statement implies that the square footage in the Hearing Examiner's fallback Condition 1 is
15 the same as the square footage that Children's is now requesting. This is not accurate.
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17
18 Children's has asked City Council to exclude all mechanical space from the Plan's
19 overall square footage limit. A hospital's mechanical space would likely comprise a
20 comparatively large percentage of the hospital and, by Children's own description, would
21 translate into a "significant" amount of building structure. Children's Appeal, p. 22 at 7. The
22 Hearing Examiner disagreed with Children's, and appropriately concluded and recommended
23 in fallback Condition 1 that the overall 2.4 million square feet (additional 1,500,000 square
24 feet) should include mechanical space. Findings 56, 57; Conclusion 15.
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1 As correctly noted by the Examiner in Conclusion 15, the Environmental Impact
2 Statement “expressly included [mechanical space] in Children’s square footage calculations”.
3 The EIS describes full build out of Children’s proposal as expanding “the hospital (including
4 ancillary, mechanical and general plant) to a total of approximately 2,357,000 square feet.”
5 Ex. 6, p. 2-27; emphasis added. By asking for mechanical space to be excluded from the
6 overall square footage limit, Children’s is, in effect, seeking much more square footage and
7 building bulk than had been understood by the public throughout the master planning process
8 and, importantly, described and analyzed in the EIS. ⁵The Council should reject Children’s
9 proposed amendments to Conditions 1 and 2. There has been no analysis of the
10 environmental impacts of the proposals. They are in conflict with the Environmental Impact
11 Statement , and could change the scope and impact of the proposed Plan. If the Council wants
12 to consider such amendments, a supplemental EIS is needed. SMC 25.05.600(C)(2).
13

14 In sum, while LCC does not agree with the amount of square footage in the
15 Examiner’s fallback Condition 1, it does agree that the overall square footage limit should
16 include and apply to mechanical space.
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20 **3. As the Examiner Held, Need for Pediatric Service Across the State Does**
21 **Not Equate to Entitlement For Excessive Development in One Residential**
22 **Neighborhood In Seattle.**
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26 ⁵ Similarly, the Examiner’s fallback Condition 2 has recommended that all mechanical space, except for rooftop, be included in the floor area ratio (FAR) limit for the master plan, and Children’s has objected to this inclusion as well.

1 The Council should examine closely what the Examiner actually said about need, as
2 opposed to Children's spin on it. Children's buries the key premise of the Examiner's findings
3 and conclusions on this point.

4 The Examiner, in Conclusion 6, acknowledged that a "statewide" need for pediatric
5 services was sufficient to support the amount of development requested. In doing so, she
6 observed that "... It [Children's] states that no other health care provider proposes to fill any
7 of the need. No evidence was produced at the hearing to refute this claim." HE Finding No.
8 35. This is not surprising: why would the established pediatric hospitals in Tacoma and
9 Spokane, for example, ever come to Seattle to contest Children's Seattle land use application
10 -- even if they received notice of it?

12 So, the Examiner acknowledged that, at the end of the day, she would have no choice
13 but to accept Children's description of a statewide need. But, contrary to Children's spin, the
14 Examiner was careful not to equate a statewide need extending east all the way across to
15 Spokane, all the way south to Vancouver, and north past Everett to Bellingham and beyond
16 with the idea that the need must be met by requiring all patients to travel to one location --
17 Laurelhurst. Her conclusion on this point was unmistakable:

19 Therefore, even if Children's could demonstrate that it should absorb the entire
20 statewide need for specialty pediatric care, it is not necessarily entitled to this
21 intensity of development, in this place, at this time.

22 Hearing Examiner Conclusion 46.

23 Children's Response ignores this key point made by the Examiner. Instead it rehashes
24 subsidiary arguments about need. For the most part, reply to this rehash would not be fruitful
25 in light of how the Examiner resolved the issue of need. However, the Council should be
26 aware of some background from the Record that bears on Children's rehash:

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- Starting in 2005 Children’s **vigorously opposed** a Swedish Hospital application to the Washington Department of Health for approval of eight pediatric beds in a new hospital in Issaquah. Children’s cited declining use rates for inpatient pediatric care and concern about its own market share as reasons that the Washington Department of Health should not allow Swedish to build pediatric beds on the Eastside despite substantial population growth there. Children’s went so far as to appeal the Department of Health decision approving the beds over Children’s objection. HE Ex 22, Attachment B and p. 5.⁶ Children’s Response now criticizes LCC by saying that it “LCC toys with bed need and square footage as if it were something divorced from the reality of hospital care that is necessary for children.” It is all too easy for Children’s to criticize a community group and claim it is ignoring health care needs when the group asks pointed questions – even in a land use process where the Code explicitly invites such participation. But, Children’s has nothing intelligible to say about how it “toyed” with – actually litigated against – Swedish Hospital’s Eastside hospital pediatric bed expansion. Are questions about a hospital’s expansion plans only legitimate when they come from a competitor such as Children’s whose announced purpose is to protect its “market share ?”
 - Children’s justifies its proposed tripling in development square footage by projecting a need to drastically increase its psychiatric beds (as opposed to acute care beds) from 20 to nearly 200. However, psychiatry and psychiatric beds/facilities are not even mentioned, as a growth area or at all, in Children’s 2006 Strategic Plan, in its Master Plan description of growth areas, or its “Need to Grow” presentation to CAC. HE Ex 22, Attachment E and p. 5-6; HE Ex. 4, p. 15. Children’s only cited the statewide need for psychiatric beds as justification for tripling its development in Laurelhurst after its initial justifications were met with skepticism.
 - It is not accurate for Children’s to say that its projections of need and data are undisputed. They were deconstructed before the Examiner by Nancy Field, an experienced consultant in the discipline of hospital planning and need projection, and whom the Examiner herself described as a credible expert. Examiner Conclusion 4. Ms Field’s credentials include teaching at the University of Washington and work with a host of Washington medical institutions on hospital planning and need analysis. In fact, her work experience includes a substantial stint at Children’s itself. Ms. Field presented data and projections pointing to different conclusions than those argued by Children’s. See, e.g. Exhibits 51-66 and testimony related thereto. As described above, the Examiner chose to accept Children’s projections, but not Children’s assumption that general statewide need was tantamount to an entitlement to Children’s to satisfy it all in Laurelhurst.

⁶ These Exhibits provide important context for how the Examiner addressed “need” and are part of the Record which each Councilmember must review

1 Children's continues in its impatience with any attempt to critically analyze its
2 expansion proposal. Children's Response describes as "simplistic" LCC's reference to
3 Children's current Master Plan as context for the new one Children's is now proposing.
4 However, it would be irresponsible not to compare the proposed development with what was
5 approved in Children's current master plan. How else will decision-makers visualize and
6 understand the magnitude and impacts of Children's proposed expansion? In addition, Code
7 provisions contemplate an assessment of a major institution's adopted master plan. For
8 example, SMC 23.34.008.E.4, one of the rezone criteria that provides direction for
9 appropriate zoned height states that "the following zoning principles shall be considered":
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11 4. In general, height limits greater than forty (40) feet should be limited to urban
12 villages. Height limits greater than forty (40) feet may be considered outside of
13 urban villages where higher height limits would be consistent with an adopted
14 neighborhood plan, a major institution's adopted master plan, or where the
15 designation would be consistent with the existing built character of the area.

16 Children's Response also suggest that LCC's proposal for an effective doubling of
17 development on Children's campus only mimics the level of development that was approved
18 in the current master plan. This is not correct. LCC's proposal would: significantly expand
19 the MIO boundary to include 6.75 new acres; would increase the current maximum MIO
20 height limit from 90' to 105'; would significantly enlarge the current footprint where tall
21 tower heights of 90' and 105' would be allowed; and would nearly double the size of the
22 existing facility from about 850,000 sf to 1.554 million sf.

23 In several instances, the exaggerated arguments in Children's response brief trip over
24 themselves. By trying to prove too much, they prove much less. For example, Children's
25 Response justifies its development proposal as in part based on "catch-up." Children's tells
26 the Council: because "53 of Children's 250 beds are in *double rooms*, a condition that no

1 longer meets the best standards of pediatric hospital care — 53 new single bed rooms must be
2 built just to correct this anomaly...” However, converting 53 double bed rooms to 53 single
3 bed rooms does not require constructing 53 additional rooms: only one half that amount of
4 new construction is required.

5 In any event, LCC has never objected to development that would eliminate the
6 double bed rooms. LCC’s proposed square footage would allow Children’s to develop all the
7 square footage and beds that Children’s has identified as “planned,” and then some.
8

9 **4. There is No Pre-Emption of Land Use Regulation for Hospitals.**

10 As Hearing Examiner Findings 42, 43, and 45 and the CAC minutes Exhibit 8
11 convey, the CAC ultimately acquiesced in Children’s projections of need with the
12 understanding that the issue would be thoroughly vetted during the Washington Department
13 of Health Certificate of Need process. Children’s acknowledges this and tries to set up a
14 conflict between the state’s Certificate of Need regulations and the Seattle Land Use Code
15 arguing that Seattle is trying to arbitrarily limit its growth and decide its bed need. Again,
16 these arguments persist in misdirection.
17

18 The Examiner’s decision is careful not to enter this thicket. The “statewide” need that
19 Children’s has posited is acknowledged. What is not accepted is Children’s claim that, if it
20 decides to serve an entire statewide need, it is entitled to whatever zoning and development it
21 takes to do so in Laurelhurst. Nothing in the state Certificate of Need regulatory program
22 gives an institution a free zoning pass, pre-empting local land use laws. If the Legislature had
23 intended that hospitals write their own zoning tickets, it could have easily adopted a measure
24 saying so. It has not. Instead, local governments continue to have the responsibility, as under
25 the Seattle Code, to ensure the livability and vitality of an institution’s surrounding
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1 neighborhood, while the Department of Health is ultimately responsible for need
2 determinations.

3 Why then, after railing against City interference and making legally menacing
4 comments about the City's lack of authority in the "need" arena, has Children's announced
5 before the Council that it will not oppose the CAC recommendation that:

6 Prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the
7 Master Plan, Children's shall provide documentation to the Director and the CAC
8 clearly demonstrating that the additional construction requested is needed for
9 patient care and directly related supporting uses by Children's, including
administrative support.

10 See Hearing Examiner Condition 17.

11 It appears that Children's would rather not have the City actually rely on and defer to a
12 need determination by the experts at the Washington Department of Health. Instead,
13 Children's would prefer that the City rely on a determination by DPD and the CAC – both of
14 whom Children's has previously acknowledged have no expertise or authority in the field.

15 Children's had it right the first time. Now that its Response has pointed out that
16 whether a particular state need is appropriately met by a particular institution is a
17 determination reserved to the Washington Department of Health, it is clear that Hearing
18 Examiner Condition 17, based on the CAC recommendation, should be modified. Instead of
19 "demonstrating the need-appropriateness of its proposals to bodies with no expertise or
20 authority in the field (CAC and DPD), Children's should be required to provide a Certificate
21 of Need from the Department of Health "prior to issuance of any MUP for any project under
22 Phases 2, 3 and 4 of the Master Plan..."
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1 C. The Examiner's Fallback Condition Allowing Designations Of MIO 160
2 And Heights Up To 140 And 125 Feet Should Be Modified To Limit
3 Heights To No More Than 105 Feet.

4 Condition No. 3 in the fallback conditions drafted by the Examiner to address the
5 possibility that Children's would appeal and overturn her denial recommendation, authorizes
6 an MIO 160 designation with, for now, maximum heights of 140 and 125 feet. Not
7 surprisingly, Children's argues in favor of retaining this condition as reflecting its "carefully
8 tailored" plans.

9 In fact, the structures shown in the master plan are concepts. They have not been
10 designed and Children's has not provided, at least for public review, data that would support
11 its claim that functionality cannot be achieved in a 105 foot tall tower. Children's refused to
12 model the effect of reducing the towers to a 105' height limit, either with maximum square
13 footage or reduced square footage. Exhibit 8, p. 205. Children's has then used this as part of
14 its all or nothing strategy: who can address whether an alternative will or will not work if
15 Children's will not model and discuss them? The site/building elevations and oblique views
16 of the proposal in Children's final master plan (HE Ex 4, Figures 38 and 39) do not show
17 building connections on the top floors of the new buildings, as Children's now claims is
18 essential, but at lower levels that would be within the 105' height envelope. These same
19 site/building elevations as well as Children's topographical data – all that Children has
20 released – show that, even if Children's were allowed the full measure of development it has
21 demanded, a 105' limit would reduce the tallest tower(s) proposed by Children's for the
22 Laurelon terrace property by floor. Of course, greater reduction could be achieved if over-all
23 development square footage were limited. If the Council determines that it will overturn the
24 Examiner's denial recommendation, a remand with directions that Children's cooperate in
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1 modeling structures/towers within a 105 foot height limit, and provide the necessary data
2 rather than conclusory statements is absolutely necessary to an informed alternative decision.

3 Children's also claims that the higher heights it demands are not only necessary and
4 beneficial, but are also: "a very small percentage of Children's campus." However, when one
5 adds up the percentages Children's cites, as described in LCC's Response (p. 26-27), the
6 percentage of the new, tall MIO districts, which would allow building heights taller than
7 currently permitted on campus, is nearly 20% of the campus, or 6 acres! This is not "small."
8 Children's says that these figures are an overstatement because they are only "zones" in
9 which actual buildings would be designed, but there is no condition that limits how much of
10 the zone can be developed to the maximum allowed height. Notably, the "illustrations"
11 Children's deploys now to show a more moderate approach have not been incorporated into
12 the binding conditions it supports and are so nonspecific as to make such incorporation
13 problematic.
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16 Continuing in its all or nothing vein, Children's posits that if it does not get the heights
17 it demands, then "it would likely push more bulk to the perimeters of the campus, including
18 40th Avenue NE and NE 45th, two areas of concern for the Examiner. See Conclusions 19
19 and 20." Children's Response, p.14-15. The message is clear: "Don't like tall tower height?
20 Then you get bulky buildings, reduced setbacks and less open space. Don't like that? Then
21 it's back to tall buildings." Impacts are shifted, not mitigated as Children's presents the
22 situation as a mandatory Hobson's Choice.
23

24 Again, this is why the Examiner recognized that denial was required because
25 Children's confronted her with as an institution that would not offer even for comparison a
26 modestly reduced development alternative. LCC did offer one: a package proposal including

1 reduced square footage and reduced building heights as well as other mitigating components
2 like an increased setback along NE 45th Street and a below-grade Southwest parking garage
3 (if built). Structures would not be bulkier or closer to less intense, perimeter zone edges. The
4 tower(s) would be just as slender or more so, and shorter. Children's rejected such
5 possibilities out of hand. However, the Council need not do so and can remand to require that
6 they be studied.

7
8 LCC's Appeal, including the very pages cited by Children's to argue that LCC
9 ignores the subareas (e.g., LCC Appeal at 9), clearly acknowledges the 125' and 140'
10 subareas within the MIO 160 height zone proposed by Children's.⁷ What LCC points out
11 though, is that the MIO 160 district designation has meaning under the Code that is different
12 from and independent of the subarea heights. If formally established by Council, the higher
13 MIO 160 sets the stage for increases height, either within the MIO 160 or in other MIO
14 districts on campus. See SMC 23.69.035. In other words, while Children's makes light of it
15 now, the effects of a zone height designation of MIO 160 – regardless of what conditions are
16 imposed now – are not to be disregarded.

17
18 Children's complaint that there is no impact analysis regarding LCC's requested MIO
19 105' is rich with irony in light of the fact that it was Children's itself that rejected all requests
20 for such an analysis. Meanwhile Children's dismisses as "coincidence" the comparison to
21 105 foot maximum MIO heights of other institutions that are in settings similar to Children's
22 low density residential neighborhood, including those that are outside of urban villages. But,
23 MIO heights are established based on neighborhood context, the balancing that is required in
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⁷ This repeated tactic by Children's – setting up a faux disagreement so that it can be readily and self-righteously knocked down -- is not constructive.

1 the Major Institutions Code, and the Code's various rezone criteria. Those that have been
2 established to date show that Council has never approved an MIO height greater than 105' in
3 a residential neighborhood like Laurelhurst. This is a fact, regardless of whether the
4 institution has a "first generation" master plan or a more recently adopted plan.

5 Of Seattle's 13 major institutions (including the University of Washington), only five
6 have MIO heights greater than 105' – Swedish, Harborview, Virginia Mason, Seattle
7 University and the University of Washington. All of these major institutions are located in
8 intensely zoned and developed neighborhoods – neighborhoods that were also, not
9 "coincidentally," designated as urban centers, the most intense urban village of all. Yet it is
10 the hospitals in these intense urban settings that Children's explicitly references and seeks to
11 emulate, in total denial of the actual characteristics and confines of its own low-density
12 setting. Other hospitals that are located in lower density residential settings – Swedish at
13 Cherry Hill (formerly Providence) and Northwest – operate under master plans that have MIO
14 105' and lower heights.

15
16
17 There is nothing in Laurelhurst's development context that supports MIO heights
18 greater than 105' anywhere on its existing or expanded campus, especially when the result of
19 Children's proposed MIO increase would be significant height, bulk and scale impacts on the
20 surrounding community. Indeed, a credible argument could be made that the maximum
21 height limit in Children's new master plan should be the same as in its currently approved
22 plan: MIO 90. Instead, LCC has proposed MIO 105 for the tower(s) on the Laurelon Terrace
23 property. This is not by "coincidence," but after assessing Laurelhurst's neighborhood
24 context, Children's proposed development program and its height, bulk and scale impacts,
25
26

1 Children's current master plan and development, and the characteristics of other master plans
2 and their contexts, and applicable regulatory provisions.

3 As a last point in its discussion of Examiner fallback Condition 3, Children's repeats
4 the claim, already addressed in LCC's response, that its plan represents extraordinary
5 mitigation rather than the "square peg in a round hole" the Examiner found after an in-depth
6 review. This argument again illustrates the principle that where one ends up depends on
7 where one starts.

8
9 Here, Children's starts by locating an unprecedented amount of development in the
10 Laurelhurst neighborhood, at heights never before approved in this area or in Children's
11 current master plan. It then ends up by labeling its reshuffling of some of its proposal for
12 excessive development (and demolition of 136 units of housing) as extraordinary
13 "mitigation." However, Children's all-or-nothing approach to master planning does not
14 reduce or eliminate significant impacts for the community as a whole; it only moves them
15 around, pitting one part of the neighborhood against another. While some residences located
16 to the east of Children's may be less impacted by the current maximum build-out proposal
17 compared to other maximum build-out alternatives in the EIS, those located in other
18 directions would still be significantly impacted.

19
20
21 **D. Children's Demand for Expansion of the Institutional Boundaries to the**
22 **Hartmann Property Across Sand Point Way Is Illustrative of Why The**
23 **Examiner's Denial Recommendation Is Correct: The Hartmann Expansion**
24 **Should Be Eliminated From Any Master Plan Approval.**

25 Children's has again acknowledged that it purchased the Hartman property across
26 Sand Point Way in 2000, just a few years into its current Master Plan, even though the
property was outside of its boundaries and not part of its approved Master Plan development.

1 Children's now makes every conceivable technical argument for avoiding the intent of the
2 Code and expanding its campus across the street. It is not hard to understand why: if one is
3 willing to ignore the impacts on the surrounding residential neighborhoods there is much to be
4 gained by crossing the arterial and commencing intensive institutional development on the
5 other side. However, from a land use and neighborhood perspective, this move is emblematic
6 of what is wrong with Children's all or nothing Master Plan . It is dependent on actions and
7 expansions that are the type that the Major Institutions Code was explicitly adopted to
8 prevent.
9

10 Children's and DPD argue that the Hartmann property across Sand Point Way is
11 contiguous to Children's per SMC 23.34.124.B.2. Children's claim in particular is that it is
12 "contiguous (by City standards) to the Laurelon Terrace portions of the expanded campus."
13 At the outset, this concedes that Children claim is at best for a contingent continuity: if it is
14 permitted to bring Laurelon Terrace within its institutional boundaries – a distinct proposition
15 under the Code from simply buying it – then it can claim a dubious continuity.
16

17 However, it is doubtful whether the Code allows a Master Plan to expand the
18 institutional boundary and then use that expansion as a pretext for further expansion across
19 the street, all in one maneuver.

20 Worse yet, as the Council will observe on a site visit, Children's claim of contingent
21 continuity is a stretch at best as a matter of geography. It depends entirely on "contiguity"
22 between Laurelon Terrace and the point of a corner of Hartmann. However, the Code
23 requires contiguity of the property as a whole, not of a gerrymandered pinhead. Only the
24 point of a corner of the Hartmann property is across Sand Point Way from Laurelon Terrace.
25 The Hartmann property is actually separated from Laurelon Terrace by two streets (Sand
26

1 Point Way NE and 40th Avenue NE) and privately owned and developed property (Wells
2 Fargo Bank), which would be sandwiched between Children's development under Children's
3 proposed Master Plan. Ex. 6, Figure 2-4, rev, p.2-18; Ex. 22, Attachment G, February 2009
4 Map. The map in Exhibit 22, Attachment G shows that Children's will be creating the very
5 conditions for the Wells Fargo site and remaining properties along 40th Ave NE –
6 sandwiched between major institution uses and properties, isolated from other non-
7 institutional uses and properties – that the adjacency requirement is intended to avoid.
8

9 Why then do the Examiner's fallback conditions allow for the leap? Because, in the
10 absence of the denial that the Examiner strongly recommended, it might relieve some of the
11 development pressure on the other side of the street. See, e.g., Examiner Conclusion 9 and
12 LCC Appeal at 23-25. The Examiner concluded that "the benefits to the neighborhood of
13 placing some of the proposed development at Hartmann outweigh the risks." Conclusion 12.
14 Of course, this means that if square footage and corresponding impacts on the rest of campus
15 are reduced, or denied, as the Examiner strongly recommended in the first instance, the
16 Examiner's primary rationale for including Hartmann in the MIO evaporates.
17

18 Equally important, however, the "benefits" that expansion Hartmann would provide
19 are both illusory and, even if real, would come at too high a price. Preventing the incremental
20 expansion of institutional boundaries into surrounding neighborhoods has been a cardinal
21 tenet since the Major Institution Code's inception. The Hartmann leap would violate this
22 tenet in egregious fashion and lay the groundwork for more. Having successfully gambled by
23 buying Hartmann in 2000 when its Master Plan did not allow for its use, there is nothing to
24 prevent Children's from repeating the maneuver. And, there will be a track record to suggest
25 that it can do so with impunity.
26

1 Children's also points to a divided report in which a CAC majority went along with
2 taking Hartmann into Children's boundaries. What Children's does not acknowledge is that
3 the CAC originally voted to exclude Hartmann from the MIO. Ex. 8 at 149. Then, as
4 described in one CAC minority report, CAC was more or less forced to reconsider and accept
5 inclusion of Hartmann in the MIO:

6 ". . . it wasn't until the 11th hour that we were given Alternative 7r. This
7 alternative was as close as the CAC was going to get to our input (much of our
8 input was left off because it did not fit CHRMC's vision). Funny, but Alternative
9 7r INCLUDED the Hartmann property even though it was already voted off the
10 MIMP by the CAC with a majority vote (and later overturned to work with Alt.
11 7r. This was the last alternative given to us because we were out of time."

12 Ex. 8 at 253. Even then, six members of the CAC signed on to another minority report
13 sticking with the CAC's original recommendation that the Hartmann property not be included
14 in the MIO. Ex. 8, p. 243-244.

15 Children's also cites to the Examiner's finding that, as a physical matter, the Hartmann
16 property is screened in one direction by a slope and the Burke-Gilman trail -- and wonders
17 why LCC did not object to this description of topography. In doing so, Children's confuses
18 LCC's approach with its own. LCC will not subscribe to Children's practice of imposing on
19 the Council a "scorched earth" attorney's debate about matters that are not really at issue.
20 Here, the issue is not the physical question of whether the Hartmann property is screened in
21 one particular direction by the Burke Gilman Trail. Whether it is or not does not resolve the
22 fundamental zoning question posed by Children's proposal to extend its boundaries across
23 Sand Point Way to property it purchased in 2000, despite the clear knowledge that neither its
24 Master Plan nor the Major Institutions Code contemplated such a move.
25
26

1 Because the Hartman property has been used for grandfathered low rise low intensity
2 neighborhood doctor purposes, Children's also is dismissive of the fact that its expansion to
3 Hartmann eliminates 1.7 acres of residentially-zoned land. However, only in Children's view
4 are the current – and here longstanding – zoning and Comprehensive Plan designations of a
5 property proposed for rezone irrelevant to rezone analysis. The Hartmann site is currently
6 underdeveloped, making it a prime candidate for redevelopment in accordance with its
7 residential zoning and a prime property to help sustain the amount of residential units in the
8 neighborhood and area. Instead, Children's proposes a rezone to a use and an intensity far
9 beyond its current grandfathered use.
10

11 Children's proposal to eliminate the 136 garden townhouses on the Laurelon Terrace
12 site necessarily aggravates the situation. It makes the concern about precedent, already
13 present in the Code, all the more appropriate. While the Examiner, in Conclusion 12 says
14 that, "[I]t seems highly unlikely that Children's would choose to grow into the multifamily
15 area north of Hartmann, and under the existing Code, it cannot expand into the single-family
16 neighborhood west of the Burke Gilman Trail," the same statements could have been made
17 about Laurelon Terrace. Yet, Children's is now acquiring and demanding that it be permitted
18 to raze the entire 136 unit garden apartment community.
19

20 Two years ago, such a move might have also been considered "highly unlikely," but
21 Children's accomplished it with relative swiftness, beginning with its first "proposal" (threat)
22 to build 240' towers opposite the garden townhouses, which no doubt hastened purchase
23 negotiations.
24

25 **E. Vehicular Access To Children's Campus From 40th Avenue NE Needlessly**
26 **Imposes Institutional Impacts On The Adjacent Residential Neighborhood.**

1 Children's Response does not dispute that it is the intensity of development under
2 Children's new 2.4 million square foot Master Plan that prompts the proposal to establish two
3 new vehicular accesses to the hospital, including for the new SW parking garage (for 1100
4 vehicles), off of 40th Avenue NE, a residential neighborhood, local access street.

5 Here, as elsewhere, the key to understanding the problem is recognition that it is
6 brought on by Children's all or nothing proposal – for which the Examiner has recommended
7 denial. The 2.4 million square feet of development Children's demands outstrips the capacity
8 of Sand Point Way to handle Children's ingress and egress traffic. The "solution?" To
9 offload impacts onto the neighborhood. The Examiner's fallback condition recognizes as
10 much when she says that "moving one of the access points to Sand Point Way would degrade
11 traffic operations on that arterial." Hearing Examiner Conclusion 26.

12 In other words, given the substantial impact burden Children's over-the-top expansion
13 will already impose on Sand Point Way, the neighborhood will have to take the hit. The
14 "good news" per the Examiner is that the two access points "will operate at LOS C or better"
15 on average. Id. However, even if this happy conclusion were accepted, it does not speak to
16 the queuing and obstructions that go into such a calculation.

17 Children's and its allies have pointed to the CAC majority recommendations as
18 conclusive – even where the Examiner differed. However, on the issue of 40th Avenue NE,
19 Children's cannot do that because, as it concedes, the CAC "recommended that there be only
20 one access from 40th Avenue NE, 'to serve either the emergency room or general parking, but
21 not both.' Ex. 8, Recommendation 9. The CAC also recommended that traffic leaving
22 Children's Southwest Garage go north only on 40th Avenue NE." A CAC divided report went
23 even further in barring use of 40th Ave. NE. Yet, Children's went to great lengths to convince
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1 the Hearing Examiner to reject both of these recommendations, which she did in her fallback
2 conditions.

3 LCC has never viewed the CAC recommendations as sacrosanct, particularly in light
4 of the CAC's skewed composition and the pressure placed on it by Children's. However, it is
5 noteworthy that, for all of that, the CAC members agreed on severely limiting use of 40th
6 Avenue NE. Yet, Children's, as ever in all-or-nothing mode, refuses to accept their
7 recommendation.

8
9 That the Examiner did so is consistent with her over-all approach. As her decision
10 unmistakably conveys, her considered recommendation is that Children's take it or leave it
11 proposal should be denied. The fallback conditions she accepts are just that: fallbacks
12 assuming that the Council will decide to allow Children's to proceed as it has proposed.

13
14 **F. The Southwest Parking Garage Should Be Placed Underground.**

15 In discussing the Southwest Parking Garage Children's again picks a fight that does
16 not exist and ignores the issue that does. LCC's appeal (at 34) states that:

17
18 Many hospitals in the area have successfully constructed underground parking.
19 Ex 22, Eychaner Comments; Ex. 8, CAC Final Report (Minority Report attached
20 as Appendix 1), at 249-250. One example is Overlake Hospital, in downtown
21 Bellevue by I-405, which recently made effective use of limited land resources by
22 constructing its new multi-level hospital bed wing on top of its new, multi-level
23 underground parking garage. Id. An added benefit of locating garages
24 underground is that it allows for the best use of limited land by the hospital, and
25 more land area for beds and associated facilities on the main campus, while
26 providing necessary mitigation for the neighborhood.

Children's reads that back as LCC demanding that "Children's should put a bed wing
on top of the garage (Appeal at 34)." Citing an example where a bed wing was built over a

1 multi-level below grade parking garage does not equate to a demand that that occur in
2 precisely the same fashion on Children's campus. It does equate to an acknowledgement that
3 there are alternatives which should have been explored before Children's adopted its "my
4 way or the highway" approach, leaving a substantial portion of its parking garage needlessly
5 above-grade. Nevertheless, Children's Response goes off and running on this straw man,
6 leaving behind the real question of why it will not explore alternatives placing the garage
7 below grade. Children's is demanding approval to cram 2.4 million square feet into a
8 residential neighborhood, and significantly expand its boundaries against clear Code direction
9 not to do so, but it will not offer an alternative placing a garage entirely below grade.
10

11 Under the current, adopted master plan, Children's was able to achieve development
12 standards that are comparatively reasonable and compatible with the surrounding
13 neighborhood -- maximum MIO height of 90' (with a small footprint); less than 35% lot
14 coverage; and an FAR of .9 -- without building structures on top of underground parking
15 garages and without any boundary expansions. Children's new proposal sweeps this all aside,
16 making underground parking garages a necessity that cannot be ignored.
17

18 Children' additional argument's against undergrounding the parking garage depend on
19 its consistent insistence on no square footage reductions and restriction of "alternatives" that
20 just shift around significant impacts rather than actually reduce them. Undergrounding of
21 massive parking garages is common; its accomplishment is not rocket science. It is done
22 routinely by institutions and developers who recognize that fig leaf "landscaping" and
23 "screening" are weak palliatives for the face with which such a structure and use confronts a
24 residential neighborhood.
25
26

1 It is no wonder then that, faced with Children's refusal to offer alternative designs and
2 plans, the Examiner refused to allow her hands to be tied and recommended, per Code, denial.
3 And, as explained in LCC's Appeal, even her fallback conditions include a prohibition on
4 above-grade development in setback areas which would seem to preclude Children's plan for
5 the garage. See LCC Appeal at 32-35.

6 **G. The Examiner's Housing Fallback Condition on Housing Should be Modified**
7 **To Require Actual Comparable Replacement Without In Effect Crediting Public**
8 **Funds to Children's Obligation.**

9 The Displacement Coalition/Task Force appellants have explained the fallacy in
10 Children's and DPD's approach to the Code's comparable replacement housing requirement.
11 For the reasons stated previously and by the Coalition/Task Force, the Examiner's fallback
12 condition regarding housing should be revised.
13

14 **H. Peripheral Policies cannot justify Children's Plan.**

15 In one of its few independent comments , DPD complains that LCC exaggerated the
16 inconsistency of Children's master plan with Comprehensive Plan goals and policies, and
17 cites in support of its claimed exaggeration that LCC only identified inconsistencies with six
18 goals and policies. However, LCC focused on those in the RFEIS that had the most relevance
19 to the fundamental issue of balance, preservation of a neighborhood's livability and vitality,
20 and neighborhood context. LCC could have also cited additional goals and policies, including
21 LUG35, LU179, LU186, and LU199, that addressed similar or other critical issues such as
22 boundary expansion and were also determined by the RFEIS to be in conflict with Children's
23 proposed master plan. In contrast, DPD's Response offers a litany of "consistent" goals and
24 policies that are, upon examination, principles for the general master planning process, but are
25 not germane to the fundamental balancing that City Council must make. Forr example, it
26

1 dwells heavily on policies that allow the establishment of a citizens advisory committee or
2 identify master plan contents as if compliance with such procedural guidance could outweigh
3 or excuse noncompliance with core policies addressing substance. This approach is
4 misguided.

5
6
7
8 **I. LCC's Appeal Per The Requirements Of The Code Identifies Specific**
9 **Objections To The Hearing Examiner's Recommendation and Specifies The**
10 **Relief Sought.**

11 The Code requires that an appeal of an Examiner's decision "clearly identify specific
12 objections to the Hearing Examiner's recommendation and specify the relief sought." There
13 is no requirement in the Code for listing specific Findings and Conclusions in the Appeal
14 initiating Council review. Nevertheless, LCC's Appeal does that and more in 40 pages of
15 point by point discussion complete with citations to the Record and the Examiner's decision.
16 Children's attempt to conjure up some unmet appeal requirement is a measure of its
17 desperation, not an honest reflection of the Code or LCC's appeal. In any event, as discussed
18 in detail above, many of the Findings which Children's would like to debate are beside the
19 point of the quasi-judicial land use decision before the Council.

20
21 **CONCLUSION**

22 For all of the reasons discussed above and in other submissions by LCC as well as
23 those in concurrence with LCC's Appeal including Hawthorne Hills, the Federation, the
24 Displacement Coalition/Interfaith Task Force, and individual commentators, LCC respectfully
25 requests that the Council uphold the Examiner's denial recommendation. In the alternative, if
26

1 the Council, after individual review of the complete Record, determines that it has been
2 proven that the Examine recommendation was in error, it should grant the relief requested in
3 LCC's Appeal including modification of the Examiner's fallback conditions.
4

5 Respectfully submitted this 28th day of September, 2009.

6 EGLICK KIKER WHITED PLLC
7

8
9 By 

10 Peter J. Eglick, WSBA #8809
11 Attorneys for Appellant
12 Laurelhurst Community Club
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CERTIFICATE OF SERVICE

I certify that on the 28th day of September, 2009, I sent copies of the foregoing document (including this Certificate of Service by first class mail, by depositing the copies in the U.S. mail, with proper postage affixed, at the addresses listed below.

John V Fox
Seattle Displacement Coalition
4554 — 12th Ave NE
Seattle, WA 98105

Bill Kirlin-Hackett
Interfaith Task Force on Homelessness
3030 Bellevue Way NE
Bellevue, WA 98004

Thomas Walsh
Judy Runstad
Foster Pepper Law Firm
1111 Third Avenue, Suite 3400
Seattle, WA 98101

Catherine J Hennings
3638 — 49th Ave NE
Seattle, WA 98105

Steve Ross
3625 — 47th Ave NE
Seattle, WA 98105

Bonnie Miller
6057 Ann Arbor Ave NE
Seattle, WA 98115-7618

Seattle Community Council Federation
Rick Barrett, Vice President
1711 N 122nd Street
Seattle, WA 98133

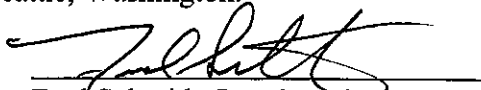
John E. Keegan
Davis Wright Tremaine
1201 Third Avenue, Suite 2200
Seattle, WA 98101

Judith Barbour
Assistant City Attorney
Seattle City Attorney's Office
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769

Peter Buck
The Buck Law Group
2030 First Avenue, Suite 201
Seattle, WA 98121

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28th day of September, 2009, at Seattle, Washington.


Fred Schmidt, Legal Assistant

