

CITY OF SEATTLE

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BEFORE THE CITY COUNCIL
OF THE CITY OF SEATTLE

In the Matter of an Application of Swedish
Medical Center for Approval of a Major
Institution Master Plan

CF 311936
DPD Project No. 3012953

And the Appeal of Cherry Hill Community
Council, et. al., of a Recommendation by the
Hearing Examiner for the City of Seattle

APPLICANT SWEDISH MEDICAL
CENTER'S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD

Applicant Swedish Medical Center ("Swedish") requested that the Committee supplement the record on appeal to include two e-mails the Washington Community Action Network ("Washington CAN") sent in January 2016, one to its constituents and one to Swedish. These e-mails, sent by a party-opponent, are necessary to ensure a complete record on the public benefit issues Washington CAN raised in the hearing.

Appellant 19th Avenue Block Watch ("19th Avenue") opposes supplementation, but it has no standing on the issue. Neither it, nor any other appellant but Washington CAN, raised charity care as an appeal issue to the Council. 19th Avenue cannot now appropriate Washington CAN's former appeal issues—issues that Washington CAN's e-mails demonstrate have now been addressed.

An appellant may not assert new legal issues in a reply in support of their appeal. *See, e.g., Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 397, 858 P.2d 245 (1993); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d

1 549 (1992). Any notion that 19th Avenue they may expand the scope of their appeal through a
2 response to a motion to supplement is contrary to Washington State Supreme Court precedent.
3 Therefore, all argument and documents offered in 19th Avenue's Response concerning the issue
4 of charity care should be rejected by the Committee as they are outside the scope of 19th
5 Avenue's appeal.

6 Even assuming, *arguendo*, the Committee reaches the merits of 19th Avenue's Response,
7 the arguments opposing supplementation go to the *weight* of the evidence offered by Swedish,
8 not its admissibility, and should be rejected.

9 As Swedish stated in its motion, no remaining appellant is prejudiced by the addition of
10 the Washington CAN e-mails because none of them raised charity care in their appeals.
11 However, the fact that the e-mails do not prejudice any remaining appellant does not mean, as
12 19th Avenue argues in its response, that the e-mails are "immaterial and irrelevant." The process
13 in this Type IV Council Land Use Decision is not limited to ruling on the appeals. Rather, the
14 Council must make a decision on the merits of the underlying MIMP application, and would do
15 so even if no appeal had been filed. The e-mails are necessary to complete the record on the
16 charity care issues raised by Washington CAN prior to and during the hearing, clarifying the
17 adverse public benefit evidence already in the record. There is no other way to inform the
18 Council—and any reviewing tribunal, should the Council's decision be appealed—that Swedish
19 adopted a new charity care program that satisfied Washington CAN's concerns before
20 Washington CAN withdrew its appeal. Swedish would have requested that the Council
21 supplement the record with these e-mails even if no party had filed an appeal.

22 19th Avenue asks the Council to create a new rule of evidence requiring that Washington
23 CAN's assertions contained in their e-mail be made by sworn affidavit. In fact, the Washington
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1 CAN e-mails would be admissible even under the rigorous evidentiary standards of court,¹ and
2 they are properly included in a record that already swells with unattested e-mails and letters, as
3 well as unsworn public comment (including from 19th Avenue). There is no reason to believe
4 that the new Washington CAN e-mails are any less trustworthy than any of the other unsworn
5 statements already properly in the record.

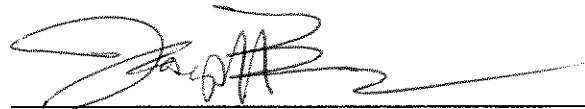
6 Swedish does not ask the Committee to rule on whether or not "Swedish is a leader" in
7 charity care. The Committee is free to do so, but that is not the point of supplementing the
8 record with the e-mails. Rather, Swedish asks the Committee to supplement the record to allow
9 it reflect that fact that Washington CAN, the only party to submit comment or argument
10 regarding charity care, now believes that Swedish is a leader in the field of charity care.

11 The Committee should disregard 19th Avenue's arguments and supporting evidence as a
12 matter of law. 19th Avenue's arguments also fail on their merits.

13 To ensure that the Council makes its MIMP decision with the benefit of a complete record,
14 Swedish respectfully requests that the Committee supplement the record with the Washington CAN
15 e-mails attached to the Declaration of Dan Dixon.

16 DATED this 26th day of February, 2016.

17 FOSTER PEPPER PLLC

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21 Attorneys for Applicant
22 Swedish Medical Center
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24 _____
25 ¹ The Washington CAN e-mails are admissions of a party opponent and therefore not hearsay by definition. ER
26 801(d)(2). Dan Dixon's declaration, attesting to the accuracy of the copies, provides proper authentication under
state law. *See* General Rule 13 at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr13 (titled "Use of Unsworn Statement in Lieu of Affidavit"); *see also* RCW 9A.72.085.

