

February 19, 2016

Seattle City Council  
Planning, Land Use and Zoning Committee  
c/o Seattle City Clerk  
600 Fourth Avenue, Third Floor  
Seattle, WA 98104

RE: Clerk File # 314127, DPD Ref# 3016024  
Barrientos LLC contract rezone, 2203-2209 Eastlake Avenue East  
**Reply to Barrientos response to our appeal**

Dear Seattle City Councilmembers:

This letter replies to the Barrientos LLC response to our appeal of the “Corrected Findings and Recommendation” of the Hearing Examiner, dated January 11, 2016, in the matter of a contract rezone application by Barrientos LLC for property located at 2203-2209 Eastlake Avenue East, and is timely filed 7 days after the Barrientos response on February 12, 2016 (City Council 2015 Rules for Quasi-Judicial Proceedings, V.C.4).

Barrientos LLC proposes to build a massive, mixed-use, five-story behemoth of a building on the corner of East Boston Street and Eastlake Avenue East. The best visual showing how incompatible this building is with the neighborhood and how it “sticks out like a sore thumb” was created by the developer (see Appeal Attachment #1, red building)<sup>1</sup>. The project requires an increase in building height from 30 feet to 40 feet, and the record shows that over 100 residents signed a petition that the building is incompatible with the neighborhood.

We raised six objections to which Barrientos responded: (1) the City Council considered and REJECTED this rezone in legislative zoning of Eastlake; it’s inappropriate to use a quasi-judicial process to overturn a legislative process; (2) the developer is illegally trying to use a quasi-judicial contract rezone to create an area-wide rezone, which is a legislative act; (3) the

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<sup>1</sup> Documents appended to our Appeal are referenced as numbered Attachments; those appended to this reply are referenced as lettered Exhibits.

rezoning sought is claimed as necessary to meet Eastlake growth targets that have already been met and FAR EXCEEDED; (4) the most appropriate zoning is the current, City Council legislated, zoning that was an agreement between the neighborhood and the City Council that still has broad-based neighborhood support; (5) this contract rezone has no substantial public benefit; and (6) numerous errors of the Hearing Examiner call into question the accuracy of the Hearing Examiner's recommendation report. **Relief sought:** we requested that the contract rezone be denied and the project be remanded to fit within current council/neighborhood agreed zoning.

### **Analysis of Barrientos LLC Responses Along With Mid-Eastlake Neighbors Replies**

Most of the Barrientos response is a restatement of matters Mid-Eastlake Neighbors didn't appeal. Concentrating on the specific objections that were the basis of Mid-Eastlake Neighbors' appeal, we analyze the Barrientos responses and provide our reply.

### **Objection #1: The rezoning sought by Barrientos LLC was specifically rejected by the City Council acting in its legislative capacity based on neighborhood input and cannot be overturned by a quasi-judicial act.**

The Barrientos response (p.7) does NOT specifically challenge the detailed evidence we provided of the legislative decision made by the City Council to keep the zoning of the "four corners" of the intersection of Eastlake Avenue East and East Boston Street at a height limit of thirty (30) feet (Appeal Attachments #2, #3, #4, & #5). Our evidence clearly shows that the administration recommended forty (40) feet, but the neighborhood through its community council requested thirty (30) feet. In balancing the various interests involved and understanding what the Hearing Examiner misunderstood (see #6 below), that East Boston Street east of Eastlake Avenue East is NOT an arterial, the City Council's clear intent was to agree with the neighborhood that the four corners should be less intensely zoned.

Barrientos claims that the City Council in 2011 (Ordinance 123495, Section 31) increased the zoning in some other areas of Eastlake to a forty (40) foot height limit. But this merely strengthens our argument. The City Council did NOT disturb its legislative agreement with the neighborhood and kept the four corners height limit at thirty (30) feet. This shows that as late as 2011, the City Council was respecting its earlier legislative agreement with the neighborhood to less intensely zone the four corners.

Barrientos tries to disparage the legislative decision of this City Council based on statutorily encouraged public input as “conversations,” and that “conversations” should carry no weight. But the City Council decision in zoning the four corners for thirty (30) feet was NOT “conversations,” but was rather a legislative act, with the same force of law as other legislative acts. Barrientos ignores and does NOT challenge our conclusion that a legislative act cannot be overturned by a quasi-judicial act.

**Objection #2: The rezoning sought by Barrientos LLC is an undisguised effort to illegally accomplish an area wide rezone, a legislative act involving much more public involvement, by shortcutting the process with an inappropriate contract rezone.**

Barrientos responds (pp. 7-8) that they are only requesting a contract rezone for one location, that our concern that they are really illegally using a contract rezone to get an area-wide rezone is “hypothetical,” and that all that’s before the City Council is one structure.

As we showed in our Appeal, Barrientos, not Mid-East Neighbors, raised the goal of setting precedence to continue the 40-foot height limit “through the corridor” (Appeal Attachment #6). The Pre-Submittal Conference minutes show that the precedence of the project to carry the 40-foot “zoning designation through the corridor” was discussed (Appeal Attachment #7). And the three letters we appended to our Appeal showed supporters see the rezone as leading to similar heights throughout the “corridor.” (Appeal Attachment #8, #9,

#10). The Hearing Examiner (Conclusion #18) emphasizes the “precedential effect” of the project for rezoning neighboring property; this intent to rezone properties in an area is an area-wide rezone, a legislative act. It is inappropriate to use contract rezones as a type of creeping area-wide rezone without the public input and City Council deliberations that accompany area-wide deliberations.

**Objection #3: The rezoning sought is portrayed as necessary to meet Eastlake’s 2005-2024 growth targets, but Eastlake has already met more than double those targets and, if permitted projects are included, Eastlake has met more than triple those targets.**

The Hearing Examiner implied that this project is necessary to help meet the required zoning capacity of 125% of the adopted growth target for Eastlake. We showed that this project is NOT necessary to meet the growth target for Eastlake since Eastlake FAR EXCEEDS its growth capacity targets and is currently at 222% of Eastlake’s 2024 target.

Barrientos responds (pp. 8-9) that we are attempting to “turn this requirement on its head to block the City’s efforts to accommodate growth” because the target sets “a floor, not a ceiling,” but we are NOT trying to do that.

What we’ve shown is that growth targets are a bogus reason to support this project because Eastlake is nearly at double its 2024 growth target already! The Hearing Examiner in offering growth targets as a reason for this project does NOT admit and apparently doesn’t know that Eastlake FAR EXCEEDS its growth targets already and so this project is irrelevant for achieving growth targets.

**Objection #4: The most appropriate zoning is the way the property is currently zoned at a maximum height of 30 feet.**

Barrientos responds (pp. 9-10) that we don’t contest the Hearing Examiner’s “conclusions that support her recommendation” but we obviously do. Barrientos further claims

that Mid-Eastlake Neighbors “mischaracterize” Conclusion 27, which alleged changed circumstances, but we disputed that those “changes” support the rezone.

As we pointed out, the Hearing Examiner doesn’t acknowledge that it was the City Council in negotiations with the Eastlake Neighborhood that determined that the lower intensity use was appropriate for the “four corners” intersection of Eastlake Avenue East and East Boston Street (Findings #7 & #8 on page 2), but does acknowledge that there are no city-initiated zoning changes proposed to change the City Council-Eastlake Neighborhood agreed to zoning for the project site and its surround (Finding #9 on page 3).

Barrientos’ argument is with THE CITY COUNCIL that determined with public input that the four corners area of East Avenue East and East Boston Street should have a lesser intensity of use than other parts of Eastlake Avenue East. Barrientos continues to mischaracterize this City Council legislative act as “conversations.” The City Council determined that the four corners should have a lesser intensity of use and, as late as 2011 when the City Council up-zoned certain areas of Eastlake, they did NOT disturb the legislative agreement that the four corners would remain at the less intensity of use of the 30-foot height limit.

As we pointed out in our Appeal (p. 7) the Hearing Examiner was unable to find any significant changed circumstances THAT SUPPORT THE REZONE. The adoption of growth targets is a change that doesn’t support the rezone because Eastlake already far exceeds its 2024 target.

SMC 23.34.009.C requires that the “height limits established in the current zoning in the area shall be given consideration,” and that “permitted height limits shall be compatible with the predominant height and scale of existing development...” Zoning immediately to the north and south of the project is limited to 30 feet. That the proposed project height is incompatible with surrounding development is obvious from the figure provided by the developer

(Attachment #1). The City Council legislated a lesser intensity of zoning on the four corners, so if the developer wants to change that zoning they need to seek a legislative change, not a quasi-judicial change, to the zoning.

**Objection #5: There is NO substantial public benefit**

Barrientos responds (pp. 10-11) that their massive five-story building provides “myriad public benefits” including an additional 45 dwelling units. This Barrientos analysis is flawed. The substantial public benefits refer to the effect of the contract rezone compared to a build out at current zoning.

The appropriate analysis can be seen in the way Barrientos analyzed the detrimental effects of the rezone on public and private views of the Eastlake features to the west, Lake Union, the Space Needle and Seattle skyline, the Aurora Bridge, and the Olympic Mountain Range. Barrientos claimed that the proper comparison was NOT between what is built on the property now and the proposed building after the rezone. No, the proper comparison is between what can be built under the current zoning and what is proposed under the contract rezone. Barrientos claimed that the difference was NOT that great and provided simulated photos to prove it (Hearing Examiner Finding of Fact #19).

Exhibit A shows a block model of the allowed building under the current zoning. Exhibit B shows a block model of the proposed building under the contract rezone. A comparison of these two simulated photos show that a build-out under the current zoning will block views more than what is currently built, but the proposed design will block views somewhat more. It looks like the difference between the proposed building and current build-out is about a floor. Barrientos has NOT provided a full analysis of the proposed building versus the current build out. So the additional units provided by the proposed building, which Barrientos identifies as

the “myriad public benefits” of this contract rezone is considerably less than 45 units, but rather the number of units in the single floor disallowed by the current 30-foot height limit.

All of the alleged public benefits listed in the Barrientos response can be obtained either by reducing the number of units by the one floor disallowed by current zoning or reconfiguring the building for the same or similar number of somewhat smaller units.

**Objection #6: Numerous errors made by the Hearing Examiner**

Barrientos dismisses (pp. 11-12) the errors in the Hearing Examiner Recommendation Report as “of no consequence,” as not changing anything, and as a “silly” “typo.” It’s interesting that all the errors support a conclusion that the massive proposed building fits better into the neighborhood than it actually does.

The Hearing Examiner claims that there is a “four-story multifamily structure across the alley to the west.” In fact, the structure across the alley to the west is ONLY A TWO-STORY STRUCTURE. The Hearing Examiner claims that the proposed building will be set back far greater than it actually is set back.

The biggest mistake of the Hearing Examiner is that East Boston Street is designated a collector arterial east of Eastlake Avenue East. This is obviously false to anyone who has visited the project site as the Hearing Examiner claimed she was going to do. East Boston Street east of Eastlake Avenue East is a cobblestone road that is difficult to navigate

These Hearing Examiner errors, exaggerating the size of a surrounding building, exaggerating the intensity of East Boston Street, and exaggerating the setbacks, makes the proposed building appear much more compatible with its surroundings that it actually is. In fact, the massive, five-story building is incompatible with its surrounding (Appeal Attachment #1) as indicated by the well over 100 people who either signed the petition objecting to the project and/or provided written comments and oral testimony.

## RELIEF SOUGHT

The current zoning resulted from a negotiated legislative agreement between the City Council and Eastlake neighbors that balanced interests of the community. The rezone proposed by the developer and recommended by the Hearing Examiner was specifically REJECTED by the City Council. It's indisputable based on the record that the developer, business supporters, and the Hearing Examiner are trying to use this quasi-judicial contract rezone to accomplish a legislative area-wide rezone in violation of the SMC. A rezone is NOT needed to meet Eastlake housing unit targets because those targets have already been met and doubled, and then tripled. This project carries no substantial public benefit, at most the additional units of a single floor that could probably be mostly accommodated by reducing the size of units and reconfiguring the building. There are substantial errors in the Hearing Examiner's report that exaggerate the compatibility of the building with its surrounding and undermine the recommended approval of this project.

We respectfully request that the previous legislative agreement between the City Council and the neighborhood be honored, that this inappropriate rezone be REJECTED by the City Council, and that the project be remanded to development staff for modification to meet current zoning requirements.

Respectfully submitted,



Sandra C. Wheeler  
Authorized Mid-Eastlake Neighbors representative





## Sketch B-1

2015.03.05

View: Across Eastlake Ave E - At top of sidewalk berm across street

Existing Zoning with full build-out



## Sketch B-5

2015.03.05

View: Across Eastlake Ave E - At top of sidewalk berm across street

Current Proposed Design