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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by

SAVE THE MARKET ENTRANCE

of Decisions Re Land Use Application
for 103 Pike Street, Project 3028428-LU

NOTICE OF APPEAL

I. APPELLANT INFORMATION

1. Appellant:

Name: Save The Market Entrance.org
Address: 1415 2nd Avenue, Unit 702, Seattle, WA 98101
Phone: 907-321-2283
Email: ruth@dannerdata.com

In what format do you wish to receive documents from the Office of Hearing Examiner?

Check One: U.S. Mail Fax Email Attachment

2. Authorized Representative:

Name Claudia M. Newman, Bricklin & Newman, LLP
Address 1424 Fourth Avenue, Suite 500, Seattle, WA 98101
Phone: (206) 264-8600
Fax: (206) 264-9300
Email: newman@bnd-law.com and cahill@bnd-law.com

In what format do you wish to receive documents from the Office of Hearing Examiner?

1
2 Check One: _____ U.S. Mail _____ Fax X Email Attachment

3 **II. DECISION BEING APPEALED**

4 1. Save the Market Entrance is appealing the Analysis and Decision of the Director of the Seattle
5 Department of Construction and Inspections for Project Number 3028428-LU dated January
6 2, 2020. A copy of that decision is attached to this appeal. Save the Market Entrance is also
7 appealing the Director’s code interpretation that is required to be issued pursuant to SMC
23.88.020 in response to the request for code interpretation in the attached (and incorporated)
letter from Donya Burns and Claudia Newman to the Director of SDCI (Jan. 16, 2020).

8 2. **Property address of decision being appealed:** 103 Pike Street., Seattle, Washington.

9 3. **Elements of decision being appealed. Check one or more as appropriate:**

- 10 X Adequacy of conditions X Variance (Departures)
11 X Design Review and Departure _____ Adequacy of EIS
_____ Conditional Use X Interpretation (See SMC 23.88.020)
12 X EIS not required _____ Short Plat
_____ Major Institution Master Plan _____ Rezone
13 _____ Other (specify:)

14
15 **III. APPEAL INFORMATION**

16 1. **What is your interest in this decision? (State how you are affected by it)**

17 Marketview Place Associates has proposed to demolish the historic Hahn Building and build, in its
18 place, a 14-story hotel building with two apartment units and restaurant, bar, and retail space at 103
Pike Street in downtown Seattle (the “1st & Pike Proposal”).

19 Save the Market Entrance.org (STME) is a non-profit community action advocacy organization
20 representing the interests of community members that is dedicated to preserving the quality of life
21 and sense of place at the 1st and Pike entrance to the Pike Place Market. STME will be significantly
22 and adversely impacted by the 1st & Pike Proposal. It’s board members and constituents regularly
23 and consistently visit, use, and enjoy the iconic entrance to the Pike Place Market. The 1st and Pike
24 Proposal will destroy this culturally important intersection in Seattle. The new building will
permanently and adversely alter the symmetry, scale, and aesthetic character of the four corners of
the Pike Place Market entrance. The height, bulk, and scale of the proposal is inconsistent with the
historic character of the intersection.

25 Board members of Save the Market Entrance live in and own property in the Newmark Tower, a
26 residential tower that is immediately adjacent to and east of the 1st & Pike Proposal site. Their homes
have windows that face the project site and, as a result, they will suffer adverse noise impacts,

1 privacy impacts, loss of light impacts, glare impacts, health impacts and other impacts of the new
2 building that will impair their use and enjoyment of their property.

3 The Proposal will also cause significant adverse traffic and transportation impacts that will directly
4 harm them. For example, the project will have significant adverse traffic circulation impacts in the
5 immediate area on streets that Save the Market Entrance members drive and walk on regularly,
6 including 1st Avenue, Pike Street, Union, the alley and more. This proposal will cause a significant
7 increase in use of these roads and will create significant safety and congestion issues for drivers and
8 pedestrians alike. The project will have significant adverse loading and access impacts as well as
vehicular and pedestrian safety issues associated with the alley that runs from Pike to Union between
1st and 2nd Avenues. The board members who drive in and near the alley, walk in and near the alley,
and rely on trash service and other services that occur in the alley will be significantly and adversely
affected by the proposal's impacts to the alley.

9 Overall, a decision in favor of Save the Market Entrance on the issues raised in this appeal would
10 substantially eliminate or redress the injuries caused to them by the 1st & Pike Proposal.

11 **2. What are your objections to the decision? (List and describe what you believe to be the
12 errors, omissions, or other problems with this decision.)**

13 a. **The Decision by the Director of SDCI to issue a Determination of Non-
14 Significance (DNS) was made in violation of the State Environmental Policy Act
15 (SEPA), ch. 43.21A, and state and local regulations implementing that law for the
16 following reasons:**

17 i. The 1st & Pike Proposal will have probable significant adverse aesthetic, loss of
18 light/shadow, height/bulk/scale, and historic and cultural preservation impacts on the
19 iconic entrance to the Pike Place Market and with other historic landmarks in the
20 area. The 1st and Pike Proposal will remove the historic resource that is the Hahn
21 Building and will destroy this culturally important intersection in Seattle by
22 introducing an out-of-scale, modern, glass tower. The Hahn Building has been
23 recently nominated for a landmark designation. The new building will permanently
24 and adversely alter the symmetry, scale, and aesthetic character of the four corners
of the Pike Place Market entrance. The design of the proposal and the height, bulk,
and scale of the proposal is inconsistent with the historic and cultural character of
the intersection. It will block morning light and warmth from Pike Place Market.
These and other impacts will impact the quality of the cultural experience for
millions of visitors who come to Pike Place Market every year. Comment letters and
emails that have been submitted by the public, by organizations, and by STME (and
its representatives and consultants) that are in the project file provide more details
that describe these impacts.

25 ii. The 1st & Pike Proposal will have probable significant adverse construction impacts
26 on pedestrians, nearby residents, drivers, transit, cyclists, and tourists in the area.
Windows and decks of the homes in the Newmark Tower directly face the project

1 site. Construction activity, creating noise and dust (including toxic materials) will be
2 right outside of their windows where they live and will bar the use and enjoyment of
3 their decks. The scaffolds will be just within a few feet of the building. Congestion
4 and noise during construction, caused by cranes, excavators, and other trucks will
5 cause traffic, noise, view, safety and other significant adverse impacts to the
6 Newmark Tower residents, to tourists visiting the historic, tourist attraction of Pike
7 Place Market, and to drivers and pedestrians using the area. Construction of the new
8 building will have cumulative adverse impacts when considered in conjunction with
9 other projects moving forward in the area, such as the Waterfront Design
10 construction and other projects.

11 iii. The 1st & Pike Proposal will have probable significant adverse traffic and
12 transportation impacts, including pedestrian impacts, on the streets that are in the
13 immediate vicinity of the project site and on the alley that runs between Pike and
14 Union and 1st and Second Avenue. The new building will introduce increased traffic
15 congestion, increased parking congestion, increased loading and unloading
16 congestion, conflicts with City of Seattle plans, projects and uses in the area,
17 conflicts and safety issues with pedestrians and cyclists in this location, and other
18 impacts to these highly congested and heavily used streets. The waivers from code
19 requirements will result in a loading berth design that will not work and that will
20 have significant adverse impacts. The proposal for southbound alley traffic flow will
21 create gridlock for alley users, deprive existing property owners of access to their
22 own property, and endanger pedestrians. The Proposal will introduce major
23 congestion, delay, and safety issues in the alley for emergency vehicles, solid waste
24 pickup, delivery trucks, residents, pedestrians, other vehicles. The alley problems
25 will have the effect of causing additional adverse traffic impacts on the streets in the
26 immediate vicinity, including Pike and Union Streets, and 1st and 2nd Avenues. The
proposal will create a pedestrian safety risk at the alley access points on Pike Street
and Union Street. The new building will have cumulative adverse impacts when
considered in conjunction with other projects moving forward in the area, such as
the Pike Pine Renaissance project and the new streetcar line on 1st Avenue. Comment
letters that have been submitted by the public and Appellant (its representatives and
consultants) during the land use process provide many more details that describe
these impacts.

iv. The 1st & Pike Proposal will have probable significant adverse public facility (alley)
impacts. As explained above in section iv, the Proposal will introduce major
congestion, delay, and safety issues in the alley for emergency vehicles, solid waste
pickup, delivery trucks, residents, pedestrians, other vehicle in the alley that runs
between Pike and Union and 1st and Second Avenue.

v. The 1st & Pike Proposal will have probable significant adverse noise impacts on the
residents of the Newmark Tower. The proposal includes a rooftop bar that will create
noise that will directly and significantly impact the residents who live immediately
adjacent to and within earshot of the rooftop bar.

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- vi. The 1st & Pike Proposal will have probable significant adverse aesthetic, loss of light, light and glare, privacy, and height/bulk/scale impacts on the residents of the Newmark Tower. Seventy-seven westward facing units in addition to the 5th floor common areas for all residents of the 192-unit Newmark Tower will be impacted. The new building will be built within very close proximity to the existing residential units and common area in the Newmark Tower and will be designed in a manner that will cause significant impacts to those residents, including health impacts from loss of light.
- vii. The 1st and Pike Proposal will have probable significant adverse impacts to public views. The westward facing view approaching the Pike Place Market will be significantly and adversely impacted by this modern glass tower blocking out light and sky. The eastward facing view from Pike Place Market will be adversely impacted by the large modern tower that will be replacing an historic two-story brick building.
- viii. The 1st & Pike Proposal will have probable significant adverse impacts to trees on the project site. These trees will suffer harm or removal as a result of the construction of the new building.
- ix. With respect to the assertions made above in sections i-viii, the Director of SDCI erred in concluding that there would be no significant adverse impacts with respect to each of these elements of the environment caused by the 1st and Pike Proposal. These impacts were not adequately disclosed, analyzed, or mitigated by SDCI. The City's regulations do not adequately address or mitigate these impacts. The mitigation proposed by the developer or required by SDCI did not lower the impacts below the threshold level of being significant. As one example, the loading dock management plan is not viable and will simply not be effective at mitigating the impacts to the alley.
- x. The Director did not require or collect the necessary and adequate information upon which to make a determination on whether the 1st and Pike Proposal would have significant adverse impacts related to those elements of the environment that are identified in sections i-viii as is required by state and local SEPA regulations. Evidence will show that there are additional studies, facts, and other information that is relevant and necessary to the assessment impacts, that SDCI should have, but failed to consider.
- xi. The Director erred in concluding that the Design Review Process resulted in sufficient review and mitigation of the height, bulk, and scale impacts of the proposal. The height, bulk, and scale of the proposal will cause significant adverse aesthetic and land use impacts. The design guidelines do not adequately address or mitigate the adverse impacts of the proposal. There was clear and convincing evidence that height, bulk, and scale impacts documented through environmental

1 review were not adequately mitigated by design review. Comment letters that have
2 been submitted by the public and by Save the Market Entrance (and its
3 representatives and consultants) during the land use process provide details that
demonstrate and describe the height, bulk, and scale impacts of this proposal.

4 xii. SDCI erred in its exercise of its substantive authority under SEPA issues, including
5 failure to adequately mitigate the significant adverse impacts described above
6 pursuant to SMC 25.05.675 and other SEPA regulations. SDCI erred when it failed
7 to consider and/or exercise its authority under those provisions to mitigate the
proposal. SDCI failed to apply feasible mitigation that could be applied to this
project as explicitly stated in SMC 25.05.675.

8 xiii. The Design Review decisions violated SEPA regulatory and case law requirements
9 that disclosure and analysis of environmental impacts must occur before a decision
10 maker commits to a particular course of action. SEPA review must inform decision
11 makers and the public of environmental impacts and mitigation measures that would
12 avoid or minimize those impacts of the proposal *before* decisions are made. In direct
13 violation of law, the Design Review Board's decisions were not informed by SEPA.
14 The Design Review Board improperly made decisions that locked in the design
during the Design Review process before SEPA review was conducted. The Board's
15 Recommendation unlawfully built momentum in favor of the facility without the
benefit of environmental review in violation of SEPA. The Design Board's action
16 also improperly limited the choice of alternatives before SEPA review was
conducted.

17 b. **The Recommendation of the Design Review Board and the Director's Decision to
18 approve that Recommendation were made in error and should be reversed for
19 the following reasons:**

20 i. The 1st and Pike Proposal is inconsistent with the Downtown Design Guidelines A-
21 1, B-1, B-2, B-3, C-1, and C-6 (including the sub-guidelines for each of these).
22 Allowing a massive, out-of-scale building with no limits on this corner this will
likely lead to more buildings like it in the area– thus, leading to a complete loss of
23 the unique character of this iconic spot. The design of this proposal also does not
adequately respond to the residential homes that are immediately adjacent and to the
24 east of the new hotel. The Proposal does not respond to the neighborhood context, is
out of scale, and does not respond to the crucial role that pedestrians play in the area.
25 SDCI misapplied and misconstrued these Design Guidelines when it approved the
Proposal. SDCI erred when it concluded that the decision and recommendation of
the Design Review Board was consistent with the Design Guidelines. Comment
26 letters and emails that have been submitted by the public, by organizations, and by
STME (and its representatives and consultants) during the land use process provide
many details that describe these impacts.

- 1 ii. The Design Review Board decisions were made in error and were not fully informed
2 because the Design Review process did not allow for meaningful public
3 participation. The Design Review Board violated SMC 23.41.014 because the
4 members of the Board did not review the written public comments that were
5 submitted regarding design review issues.
- 6 iii. The Design Review Board’s decision was not informed by an analysis of impacts by
7 the Historic Preservation Officer as was required by the Seattle Code.
- 8 iv. The Design Review Board decisions were made in error because they were not
9 informed by environmental review as is required by SEPA. As a matter of law,
10 design review decisions should not have been made until after the SEPA process was
11 completed. The Board’s position that concerns with off-street parking, traffic, noise
12 and other impacts are not part of Design Review process was error. These issues
13 should have been disclosed and assessed via SEPA review before the Board made
14 its decisions on the proposal.
- 15 v. SDCI erred when it approved the Design Review Board recommendation because
16 the recommendation conflicted with conditions and mitigation that should have been
17 applied by SDCI pursuant to SEPA and because the recommendation itself violated
18 SEPA as is explained in Section 2(a)(xiii).
- 19 c. **The Land Use Code Interpretation by the Director of SDCI should be reversed
20 to the extent that the Director’s construction and application of SMC § 23.54.035
21 and SMC § 23.54.040 were made in error.** Those sections should be construed as
22 outlined in detail in the Request for Land Use Code Interpretation submitted to SDCI
23 by Claudia Newman and Donya Burns on January 16, 2020. That Request is attached
24 and incorporated into this appeal.
- 25 d. Appellant STME incorporates by reference all of the issues presented in the Newmark
26 Building Owners Association Notice of Appeal and Request for Interpretation
 regarding the 1st & Pike Proposal that was filed on January 16, 2020.

3. Relief Requested.

Appellant requests that the Hearing Examiner reverse the Determination of Non-Significance that was issued by the Director of SDCI and remand the matter to SDCI for further analysis and mitigation as deemed necessary by the evidence presented at the hearing. To the extent that the evidence demonstrates that the Proposal will have probable significant adverse impacts, Appellant requests that the Examiner order that SDCI prepare an Environmental Impact Statement for the Proposal.

Appellant requests that the Hearing Examiner reverse the Design Review decision that was issued by the Director of SDCI and remand to the appropriate body (the Design Review Board or the

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Director) for further analysis as deemed necessary by the evidence presented at the hearing and after proper SEPA review had been conducted.

Appellant requests that the Hearing Examiner reverse the conclusions made in the Land Use Code Interpretation and issue an order concluding that Appellant's interpretation is the proper construction and application of the code provisions at issue.

Appellant requests any and all additional relief that is necessary to address and alleviate the errors raised by the objections to the Decisions that are presented in Appellant's appeal.

Filed on behalf of SAVE THE MARKET ENTRANCE this 16th day of January, 2020.

By: 
Ruth Danner, President of Save the Market Entrance

And by: 
Claudia M. Newman
BRICKLIN & NEWMAN, LLP
Representative of Save the Market Entrance