9142 N. Mercer Way, Apt. 7306
Mercer Island, WA 98040
March 14, 2019

Evan Maxim
Director of Community Planning and Development
City of Mercer Island
9611 S.E. 36th Street
Mercer Island, WA 98040

Re: CAO 15-001, SEP 15-001, VAR 18-002
Loss of Economic Value of Property

Dear Mr. Maxim,

I understand that you forwarded to Treehouse my email of February 20, 2019, relating to the decision of the Washington State Board of Tax Appeals ("Board of Appeals"). Today, you kindly sent to me the response from Treehouse, dated March 4, 2019. Significantly, Treehouse in its response provides no explanation or justification for those statements that it made in Exhibit E to its letter of January 24, 2019, which are totally inconsistent with the decision of the Board of Appeals or its contentions before that Board.

The purpose of my present letter is not only to point out the inconsistencies, but also to summarize my argument relating to loss of economic value in light of the Board of Appeals' decision.

In Exhibit E to the letter from Treehouse, dated January 24, 2019, Mr. Summer discusses the value of his property. Thus, in the first paragraph of the exhibit, Mr. Summers states:

> "The Applicant acquired the property in 2014 for the nominal cash payment of $32,094 to Joseph L. Brotherton, a 25-year partner and close person friend of the Applicant's principal. This purchase was a private transaction, the purchase price having been determined based on factors other than market value considerations. As clearly stated by Mr. Brotherton in a sworn declaration dated February 10, 2017: 'The sale of the Property to Mr. Summers was clearly not consummated in an arms-length transaction, and the funds received by me upon sale did not reflect the property's fair market value…Rather, the consideration of the property included recognition of our twenty years of personal friendship and partnership activities between me and Mr. Summers.' *Declaration*, ¶ 6-7. Thus, the nominal amount paid for the property is irrelevant to the consideration of this Application."

This is similar to the position taken by counsel for Treehouse in Applicant's Closing Argument to the hearing examiner at pages 9-10. There it is argued that the purchase price of $32,094 is "at best of limited relevance." Rather, "as testified by Mr. Summers, and confirmed by Mr. Brotherton's Declaration, the 'sale' was an arrangement between long-term business partners rather than an arms-length transaction, and involved other consideration beyond the cash payment of $32,094." Instead of this figure, the Argument stresses that it is "undisputed that the assessed value of the Property is currently $417,000, and that although Mr. Summers appealed the evaluation to King County just this year, that appeal was denied by King County's Board of Equalization." Using this figure, the Argument states that "the lost economic value to the property owner is at a minimum $417,000."

In mid-February 2019, my son David Anderson (who with his wife now owns the ravine property at 9200 SE 57th St for which I still have a security interest) checked the assessed values of the property on the website of King County Department of Assessments. The website showed for the property the following appraised values beginning with 2014, the year of the purchase by Treehouse: 2014 - $32,094; 2015 - $32,094; 2016 - $32,094; 2017 - $35,000; 2018 - $38,000. From this, it can be seen that the fair market value for the years 2014 through 2016 is exactly the purchase price. For the years 2017 and 2018, it is only a small amount above the purchase price.

This prompted further research on my part. I discovered that Treehouse appealed the decision of the King County Board of Equalization to the Board of Appeals. On August 28, 2017, the Board of Appeals issued a proposed decision which apparently became final in the absence of exceptions. At the hearing, Treehouse was represented solely by Mr. Summers. The case was assigned docket numbers 89294, 90537, and 92289.

In its decision, the Board of Appeals stated the issue as follows: "The issue of this appeal is the January 1, 2014, January 1, 2015, and January 1, 2016, true and fair market values of the vacant land located at 5637 East Mercer Way, Mercer Island, Washington." The first page of the decision shows a table with the "valuation of the assessor and county board," the "contended valuation of the owner(s)," and the "valuation of the Board of Tax Appeals." For the contended valuation of the owner, the table lists the sum of $32, 094 for each of the three years. For the valuation of the Board of Tax Appeals, namely results of the appeal, $32,094 is also listed for each of the three years. Thus, Treehouse contended before the Board of Appeals that the purchase price was the "true and fair market values" for the years 2104, 2015, 2016, and the Board of Appeals agreed with this contention by Treehouse. It should be noted that the evaluation on January 1, 2014, was before the sale of the property to Treehouse later in that year.

As far as I can determine, Treehouse never brought the decision of the Board of Appeals to the attention of the City prior to my email of February 20, 2019. The decision is certainly relevant to these proceedings. Indeed, the prior decision of the Board of Equalization was even made an exhibit (Exhibit 32) in the hearing before the hearing examiner. Perhaps the reason for withholding this information from the City is that Treehouse has been making inconsistent arguments to the City and to the Board of Appeals. The decision of the Board of Appeals is

nowhere mentioned in Treehouse's letter of January 24, 2019, including the portion where the issue of value is expressly discussed. As quoted above, Treehouse contended in that letter that the purchase price did not reflect the fair market value of the property – a position totally opposite to the position taken by Treehouse before the Board of Appeals.

In a portion of the Board of Appeals' decision, entitled "*Owner's Evidence and Arguments*," the following paragraph is found:

> In support of a reduced value for the subject property, the Owner presents its purchase of the subject property on February 13, 2014, in an arm's-length transaction, for $32,094. The Owner reports that its purchase followed a five-year listing with Windermere, during which time the property did not sell because the prior owner had tried twice to get permission from the City to develop the property and was unsuccessful.

From the foregoing, it is absolutely clear that the argument advanced by Treehouse to the hearing examiner that the "assessed value of the Property is currently $417,000 and that the "lost economic value to the property owner is at a minimum $417,000" must be rejected. It has now been determined that the fair market value immediately before the purchase in 2014 and for the years 2015 and 2016 was $32,094 – as reflected in the purchase price. After stating before the Board of Appeals, presumably under oath, that the fair market value of the property was $32,094 or less, Treehouse cannot now argue a greater value as it has now done in Exhibit E of its letter of January 24, 2019.

MICC 19.07.030(B)(3)(a) directs that the "hearing examiner will consider the amount and percentage of lost economic value to the property owner." Treehouse purchased the property with knowledge that "the prior owner had tried twice to get permission from the City to develop the property and was unsuccessful." See *Owner's Evidence and Arguments* above. Because of this, the fair market value of the property is $32,094 as reflected in the purchase price and in the current assessed value by the King County Department of Assessments. A third denial by the City will have little effect on the fair market value of $32,094. Thus, Treehouse will not experience a loss.

The relevant question should be the loss incurred by the property owner as opposed to a gain. Here Treehouse bought the property for $32,094 with the hope that he could obtain a huge financial gain by convincing the City to allow its development. MICC 19.07.030 (B) was not intended to facilitate huge financial windfalls, but rather to provide relief against oppressive losses. This is apparent from MICC 19.16.010 where the definition of "reasonable use" is found. This provision states in part: "A reasonable use exception set forth in MICC 19.07.030 (B) balances the public interests against the regulation being unduly oppressive to the property owner." Denying a person a huge financial windfall does not constitute oppression.

Construing MICC 19.07.030 (B) as a means for developers to obtain huge financial windfalls perverts the purpose of the exception. For example, if gains were considered losses, it

would mean that when the hearing examiner considers the lost economic value under MICC 19.07.030(B)(3)(a), the larger the windfall gain, the greater the loss would be. Thus, a developer who could increase of the value of the land 25-fold, though avoidance of a regulation, would have a stronger case for a reasonable use exception than a developer who would increase the value of the land only two-fold through the avoidance. In short, the bigger the windfall gain, the stronger the case for an exception. This simply does not make sense. The reasonable use exception adopted by the City was intended to prevent a "regulation being unduly oppressive" and not to be a money machine to produce huge profits for developers.

Treehouse in its letter of March 4, 2019, contends that if the reasonable use exemption were denied, the value of the property would be reduced to zero. There is no factual evidence to support a contention that no one would be interested in purchasing the property if it were placed on the market at, for example, its present assessed value of $38,000. For example, if Treehouse made an offer to sell at this price, there is always the possibility that an adjoining landowner might be interested in the property. In this regard, it should be noted that deciding whether there is a reasonable use for the property, aside from building a residence, one should not be limited solely to the perspective of a developer. An adjoining landowner, who already has a residence, could possibly find reasonable uses for the property or parts of it, without building a second residence.

I do intend to submit to you in the very near future one or more letters relating to other aspects of this case. However, I did want to get this to you now as I will be out of town until March 26. I believe that David Anderson intends to response to the latest contention by Core Design relating to the points previously made by him. Thank you for your consideration.

Sincerely yours,

Peter M. Anderson

cc: Kari Sand, City Attorney