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7 **BEFORE THE HEARING EXAMINER**
8 **CITY OF SEATTLE**

9 In the Matter of the Appeals of
10 THE FOUR SEASONS HOTEL SEATTLE, et al.,
11 from a decision issued by the Director,
12 Department of Construction and Inspections,
13 regarding a Major Public Project Construction
Noise Variance

Hearing Examiner Files:
HC-18-001 through HC-18-007

Department Reference:
3029782

**WSDOT'S AND CITY OF SEATTLE'S
CLOSING BRIEF**

14 **I. INTRODUCTION**

15 Applicant Washington State Department of Transportation (WSDOT) and the City of
16 Seattle, Department of Construction and Inspections (City) jointly submit this closing brief in
17 support of their request that the Hearing Examiner uphold the March 19, 2018 decision issued
18 by the Director to grant a Major Public Project Construction Noise Variance for the Alaskan
19 Way Viaduct (Viaduct) demolition project.

20 **II. ARGUMENT**

21 **A. The Demolition Project and the Requested Variance Facts Are Not in Dispute**

22 The facts describing the demolition project on which the request for this noise variance
23 is based are established in the application. Ex. 3 at 3-7. None of those facts were disputed by
24 the Appellants. Additional facts were set out in the Declaration of Brian Nielsen, attached to
25
26

1 WSDOT's and the City's Response to Appellant Konstanteras' Motion for Summary
2 Judgment. None of the facts in Mr. Nielsen's declaration were challenged.

3
4 **B. The Evidence Supports the Director's Conclusion That the Approved Variance Is
Consistent with SMC 25.08 and Director's Rule 3-2009**

5 SMC 25.08.610 states that appeals shall be considered *de novo*, and no deference is
6 given to the Director's decision. SMC 25.08.610.D. The City and WSDOT provided evidence
7 during the hearing that supports the decision and meets their burden to demonstrate that the
8 variance should be granted. The application and the decision, along with the testimony and
9 exhibits presented by WSDOT and the City at the hearing, establish that the elements needed
10 for the Major Public Project Construction Noise Variance were established, including: (1) the
11 demolition is a major public project; (2) not allowing nighttime work would render the project
12 economically and functionally unreasonable; and (3) the variance granted is the minimum
13 extension reasonably necessary for the project. In addition, the City's witness, James Dasher
14 from Seattle Department of Construction & Inspections (SDCI), testified that the application
15 and the City's processing of it complied with the Director's Rule 3-2009. The Appellants
16 provided no evidence to the contrary.

17 **1. The project is a "major public project" as defined in the code**

18 The Viaduct demolition project is a public project that will remove the elevated
19 1.4-mile long two-level concrete and steel structure that extends from the vicinity of the
20 stadiums on the south to the Battery Street Tunnel on the north. It is expected to take about a
21 year to complete, and the requested variance is for one year. Mr. Nielsen testified that with the
22 variance, the major demolition work will require about five months. There is no dispute that
23 the project is a major public project as defined in SMC 25.08.168.

1 **2. WSDOT's inability to allow the contractor to work at night would be**
2 **economically and functionally unreasonable**

3 There is no quiet way to remove a 1.4-mile long concrete and steel structure.
4 Mr. Nielsen testified that much of the structure removal will be done with a "cruncher" or what
5 the variance applications refers to as a "concrete cracker," which is just what it sounds like—a
6 large piece of heavy equipment that takes sections of the concrete structure and breaks them
7 into smaller pieces that can then be loaded onto a truck for removal and disposal. The
8 "cruncher" is a type of impact equipment.

9 In seeking the ability to allow its contractor to do nighttime work that exceeds the noise
10 levels allowed in the Seattle Noise Code, WSDOT is attempting to minimize the cost of the
11 project and its economic impacts on the surrounding neighborhood and businesses.
12 Mr. Nielsen stated in his declaration that without a nighttime variance, the project could take
13 about forty percent additional time to complete. James Dasher, who processed the variance
14 application, stated he considered this fact, along with the fact that a shorter duration would
15 minimize impacts to the community. With the major demolition work expected to start in
16 January, Mr. Nielsen also stated that the work is expected to be completed by May 2019, prior
17 to the summer months when the impacts to tourist-oriented businesses on the Seattle waterfront
18 could be impacted.

19 **a. The ramp demolition work will temporarily block access to several**
20 **business and residential buildings, in particular access to parking**
21 **garages**

22 Mr. Nielsen testified that the demolition work at the Columbia Street and Seneca Street
23 ramps will temporarily block access to several buildings in the vicinity of those ramps. In
24 particular, access to one or more parking garages will be blocked, and that will require
25 WSDOT to arrange for and pay for alternate parking locations for the users of those garages.
26 Limiting the time period that the ramp demolition work takes will reduce this impact by
 reducing the inconvenience to the residents that use those garages and the cost of the alternate

1 parking. He also noted that the Columbia Street ramp demolition has an impact on transit, and
2 that WSDOT has prioritized that work for early completion for that reason.

3 **b. Demolition work could adversely affect residences and businesses**
4 **near the work and concluding the work more quickly lessens those**
5 **impacts**

6 In addition to the ramp demolition work, the demolition of the entire structure will
7 adversely affect the residents and businesses in the vicinity of each demolition segment, in
8 particular making it more difficult or more inconvenient to access the businesses in those areas.
9 Mr. Nielsen stated in his declaration that the variance adds about forty percent more time that
10 the impact work, which is the actual structure demolition work, can be performed. Forty
11 percent additional work hours in a given week will allow the contractor to move through each
12 two-block segment more quickly, reducing the time period the residents and businesses will be
13 affected by the noise, dust, and access limitations.

14 **c. Demolition work will adversely affect traffic in the vicinity of the**
15 **work**

16 Mr. Nielsen also addressed the fact that due to street and intersection closures that will
17 be necessary, the demolition work will adversely affect local traffic. Demolition work will be
18 done in two-block segments, closing three intersections at a time. Traffic impacts from street
19 and intersection closures have the potential to affect the businesses in those areas because it
20 will be more difficult to access those businesses. In addition, after the Viaduct is closed and
21 SR 99 traffic moves to the tunnel, Alaskan Way will become a more significant freight haul
22 route through Seattle. Reducing the time period for this work will reduce the time businesses
23 and freight traffic may be affected by street and intersection closures.

24 Mr. Nielsen's declaration includes an attachment in which WSDOT engineers
25 estimated the societal costs of lane closures on Alaskan Way for the demolition. These costs
26 were estimated at about \$13,000 per hour. Declaration of Brian Nielsen, Ex. 1. This estimate
was limited only to lane closures on Alaskan Way, and did not address other street or

1 intersection closures necessary for the demolition work. Adding forty percent more work
2 hours to the days allowed for the demolition work will allow that societal cost to be
3 significantly reduced.

4 **d. Extending the work by about forty percent causes the work**
5 **schedule to extend into the summer when there is greater impact to**
6 **tourist-oriented businesses and when residents are more likely to**
7 **have windows open**

8 Mr. Nielsen also addressed the fact that based on the proposed schedule with the
9 additional nighttime work allowed, the work may be completed prior to summer 2019 when
10 tourist-oriented businesses are busier and residents may wish to have windows open. In
11 addition to the fact that a longer schedule extends the impacts no matter what time of year they
12 occur, having the work extend into the summer months has the potential to increase the
13 significance of these impacts. As Mr. Nielsen explained, WSDOT has been attempting to
14 avoid working in the summer months for that reason.

15 **e. Work over the BNSF railroad is severely restricted by the railroad**

16 Mr. Nielsen also explained that WSDOT and its contractor will have severe limitations
17 in getting access to areas over the BNSF rail line. Because this is such a busy rail line, BNSF
18 will allow this work to occur only between 1:00 am and 4:00 am. Appellants had no evidence
19 to contradict this.

20 **3. The variance represents the minimum amount of nighttime work to allow**
21 **the project to minimize other impacts on the community**

22 Construction noise is allowed to exceed the Seattle Municipal Code limits under
23 SMC 25.08.425. On public projects, construction noise is allowed to exceed the noise limits
24 by between 15 and 25 dBA, depending on the type of equipment being used, between 7:00 am
25 and 10:00 pm. SMC 25.08.425.B.1-3. Impact work that exceeds the noise limits is more
26 restricted, and is allowed only between 8:00 am and 5:00 pm on weekdays and between
9:00 am and 5:00 pm on weekends and holidays.

1 WSDOT requested a variance to allow non-impact work to occur between 10:00 pm
2 and 7:00 am. *See* Ex. 3. WSDOT also requested a variance to allow impact work until
3 10:00 pm. The City granted a more limited variance, allowing impact work between 7:00 am
4 and 8:00 pm on weeknights and somewhat more limited times on weekends and holidays.
5 Although work may occur between 8:00 pm and 7:00 am, the work must comply with the noise
6 limits imposed in the variance, and cannot include impact work. As Mr. Dasher testified, if
7 nighttime work exceeds the noise limits, the contractor will need to use additional mitigation to
8 reduce the noise levels or do the work during the day.

9 The evidence presented by WSDOT and the City demonstrated that the variance allows
10 only the minimum amount of additional time that enables the project to minimize adverse
11 impacts. Mr. Nielsen testified that WSDOT balanced the interests of all of those concerned
12 with the project, including those who preferred having reduced work at night and those who
13 would rather see the work completed sooner. None of the Appellants presented any evidence
14 demonstrating that the demolition work could be accomplished during shorter hours and in a
15 manner that addresses the economic and functional impacts to residents and businesses
16 affected by the demolition and its associated traffic impacts. The variance meets the
17 requirement of SMC 25.08.655.B by allowing an extended construction period that is the
18 minimum reasonably necessary in light of the criteria in SMC 25.08.655.A.

19 The variance also allows the minimum increase necessary in the additional sound level.
20 WSDOT requested an additional 6 dBA over ambient sound levels. The ambient sound level
21 measured at the quietest time of the evening was 65 dBA or above at all of the noise
22 monitoring locations. WSDOT's noise expert, Ginette Lalonde, testified that an increase of
23 6 dBA is a noticeable increase. In comparison, an increase of 3 dBA is "just noticeable."
24 *See* Ex. 3 at 15. Ms. Lalonde also testified that other Major Public Project Construction Noise
25 Variances have allowed an additional 6 dBA over ambient noise levels. Appellants did not
26

1 present any evidence that a smaller increase in noise levels would allow WSDOT and its
2 contractor to minimize the overall adverse effect of the demolition.

3 Also, the noise limits in the Seattle Noise Code are *exterior* sound levels.
4 SMC 25.08.425.A. Appellants complained about what the sound levels will be *inside* their
5 buildings. Sam Steele, a construction inspector for the City testified that typical building
6 construction lowers the interior sound levels by about 25 dBA. That means that if the sound
7 level outside of the building is at the allowed 71 dBA, the interior sound level will be 46 dBA.
8 He also noted that based on Exhibits 6a and 6b, the Appellants' buildings are outside of the
9 ramp and BNSF noise-impacted areas, and the exterior noise levels at those locations are less
10 than 55 dBA.

11 The City's expert, Ioana Park, concurred with the decision allowing an additional
12 6 dBA over ambient Leq levels, noting in her report that that is consistent with other Major
13 Public Project Construction Noise Variances. Ex. 4 at 4. Ms. Park also stated that she did not
14 believe that the additional sound levels requested posed a threat to public health based on the
15 sound attenuation of the Appellants' buildings and the code-based noise limits in effect outside
16 of the variance hours.

17 **C. The Appellants Presented No Evidence To Counter Any of the Above Facts or the**
18 **Decision's Consistency with the Code**

19 Appellant Swartz stated she had concerns about nighttime noise levels and on her
20 ability to sleep at night, and that she is a light sleeper. However, she also acknowledged she
21 moved to this neighborhood five years ago, after Viaduct replacement construction was
22 underway. Despite the fact that building construction itself typically lowers sound levels by
23 about 25 dbA, Appellant Konstanteras stated that he frequently keeps windows open in his
24 residence.

1 Appellants argued that WSDOT should require the contractor to have additional crews
2 working during the day. However, Mr. Nielsen explained that at times there will be as many as
3 five crews working at once. Beyond the speculation that more crews should be hired,
4 Appellants did not produce any evidence to show that WSDOT's approach is unreasonable.

5 Appellants' concerns were with impacts to their own ability to sleep. However, the
6 additional impact work occurs between 7:00 am and 8:00 am, and between 5:00 pm and
7 8:00 pm. Appellants did not testify that they try to sleep during those time periods.

8 The work that will occur between 8:00 pm and 7:00 am is non-impact work and it must
9 conform to the limits in the variance, which is an additional 6 dBA over ambient Leq levels.
10 Any work that cannot be done within those noise limitations may not be done at night. The
11 ramp demolition work has different allowances for a seven-day period for each ramp.
12 However, the City witnesses demonstrated that all of the Appellants' homes are all outside of
13 the areas that will be impacted by the noise at the ramp locations. See Ex. 6a and 6b.

14 III. CONCLUSION

15 For the foregoing reasons, WSDOT and the City request that the Hearing Examiner
16 uphold the Major Public Project Construction Noise Variance granted for the Viaduct
17 demolition project.

18 DATED July 30, 2018.

19
20 ROBERT W. FERGUSON
Attorney General

21 

22 DEBORAH L. CADE, WSBA #18329
23 MATTHEW D. HUOT, WSBA #40606
24 Assistant Attorneys General
Attorneys for Appellant Washington State
25 Department of Transportation
26

PETER S. HOLMES
Seattle City Attorney

/s/ Patrick Downs

PATRICK DOWNS, WSBA #25276

Assistant City Attorney

Seattle City Attorney's Office

701 Fifth Avenue, Suite 2050

Seattle, WA 98104

Attorneys for the City of Seattle

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CERTIFICATE OF SERVICE

14 I, Melissa Calahan, an employee of the Transportation and Public Construction
15 Division of the Office of the Attorney General of Washington, certify that on this day true
16 copies of WSDOT's and City of Seattle's Closing Brief and this Certificate of Service were
17 served on the following parties as indicated below:

18 John Gleason
19 98 Union Homeowners Association
20 johng@secprop.com

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

21 Kay Smith-Blum
22 kay@butchblum.com

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

24 Jackie Swarts
25 jackie1.home@yahoo.com

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

26
CERTIFICATE OF SERVICE

1 Andrew Konstantaras
2 akonsta@me.com

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

4 Michael Roberts
5 mjsroberts@icloud.com

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

7 Patrick Downs
8 Assistant City Attorney
9 Seattle City Attorney's Office
patrick.downs@seattle.gov
alicia.reise@seattle.gov Alicia Reise

By:
☐ United States Mail
☐ Federal Express
☒ Electronic Mail

10
11 I certify under penalty of perjury under the laws of the state of Washington that the
12 foregoing is true and correct.

13 DATED this 30 day of July, 2018, at Olympia, Washington.

14
15 
16 MELISSA CALAHAN
Legal Assistant