BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

DAVID MOEHRING ET AL.,

From a decision issued by the Director, Seattle Department of Construction and Inspections

Hearing Examiner File:
MUP-18-022 (W)

Department Reference:
3029611-LU

ORDER ON MOTION FOR RECONSIDERATION

The Hearing Examiner issued an Order dismissing this matter on January 11, 2019. The Appellants, David Moehring et. al. ("Appellants") timely submitted a Motion for Reconsideration ("Motion"). The applicant, Julian Weber ("Applicant"), filed a response in opposition to the Motion.

The Hearing Examiner Rules of Practice and Procedure ("HE Rule") provide the following with regard to motions for reconsideration:

> (a) The Hearing Examiner may grant a party's motion for reconsideration of a Hearing Examiner decision if one or more of the following is shown:
> (1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
> (2) Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
> (3) Error in the computation of the amount of damages or other monetary element of the decision;
> (4) Clear mistake as to a material fact.

HE Rule 3.20.

The Motion requests that the decision be reconsidered on the basis of 1) irregularity in the proceedings, and 2) a clear mistake as to material fact.

The Appellants first contend that there has been an irregularity in the proceedings, because, of the issues raised in the original motion to dismiss by the Applicant, the Hearing Examiner "indicated at least six (6) of fifteen (15) instances where the Applicant's Motion for Summary Judgment should be denied." Appellants have not understood the basis for the order of dismissal. The decision is not based on a mere scoring of points between the parties concerning the issues. There is a single issue that is the basis of the order to dismiss – the failure of Appellants to adequately argue and demonstrate both in the Notice of Appeal and in their response to the Motion that the remedy they sought of an EIS would or could be demonstrated. The Hearing Examiner's Order thoroughly discussed all of the issues raised by the parties, and indeed Appellants prevailed on some of those issues, but where a party fails

to adequately support its case for a particular remedy, and it is the only remedy sought by such appellant, the appeal must be dismissed on that basis alone. The Oder to Dismiss states:

> In seeking the remedy of an EIS the Appellants must argue in the Notice of Appeal, and show in the response to the Motion that they are prepared to demonstrate with evidence that the proposal is reasonably likely to result in significant negative environmental impacts that cannot be mitigated. Only if there was a finding that there were such impacts by the Director, or on review by the Hearing Examiner, could the result of an EIS be compelled. In this case, the Notice of Appeal makes clear reference only to "significant storm water issues," and then identifies other "impacts." Even were the Hearing Examiner to assume that reference to other impacts was intended to identify significant impacts, the Notice of Appeal is almost completely lacking in identifying what those impacts are and how the project is reasonably likely to generate such impacts. Even where the Notice of Appeal meets the limited requirements of noticing other parties about such issues, when the Motion was filed the Appellants were required to argue and demonstrate how they will be prepared at hearing to demonstrate the likelihood of significant negative environmental impacts. Instead of responding to this challenge, Appellants argued issues related to inadequacies in the record, and the procedures undertaken as part of the DNS review. Appellants failed to adequately argue and produce evidence to show that they could meet their burden of demonstrating the likelihood of any significant negative environmental impact. Where Appellants made allegations that such impacts might occur, or dismissed the Motions arguments by indicating they would present adequate evidence at the hearing, this was not sufficient to meet their burden when examined under summary judgement. On this basis the appeal should be dismissed.

The Appellants also allege that there was an irregularity in the proceedings based on the Preliminary Hearing on Motion concerning the pre-hearing motion filed by the Applicant. Appellants allege an unfair advantage to the Applicant. The purpose of the Preliminary Hearing on Motion was to request clarification of the nature of the motion for the Hearing Examiner and all parties involved. The Applicant had filed a motion that had many of the characteristics of a motion for summary judgment. As the Applicant argued at the hearing, the Hearing Examiner could have proceeded with a decision on the motion without any clarification. Instead, Appellants were afforded the opportunity to understand the actual nature of the motion that had been filed, and were provided two additional weeks to respond to what was largely the same motion that had been originally filed. The Hearing Examiner did not provide legal advice to any party, and the suggestion by Appellants that the Hearing Examiner should have directed them concerning the legal implications of the remedy sought in the Notice of Appeal, is wholly out of compliance with hearing procedures.[1]

Appellants misconstrue the meaning of "clear mistake as to material fact," and the Motion fails to identify any clear mistake as to material fact.

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[1] It also ignores the fact that Appellants were beyond the point that they could have amended their original Notice of Appeal to correct errors.

The Appellants Motion for Reconsideration is **DENIED.**

Entered this 26th day of February, 2019.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion for Reconsideration** to each person listed below, or on the attached mailing list, in the matter of **David Moehring**. Hearing Examiner File: **MUP-18-022 (W)** in the manner indicated.

Party	Method of Service
Appellant David Moehring dmoehring@consultant.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Applicant Legal Counsel Brandon Gribben bgribben@helsell.com Sam Jacobs sjacobs@helsell.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Department Lindsay King SDCI lindsay.king@seattle.gov	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger

Dated: February 26, 2019

Alayna Johnson
Legal Assistant