

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

BRUCE STRUTHERS

from a SEPA decision issued by the
Director, Department of Planning
and Development

Hearing Examiner File:
MUP-12-016(W)

**ORDER ON MOTION
TO QUASH CERTAIN
DISCOVERY REQUESTS**

The Department filed a motion to quash interrogatories and two requests for production served by the Appellant. The Appellant filed a response to the motion, and the Department filed its reply. The Hearing Examiner has considered these documents and held a brief telephone conference with the parties on the issues raised by the motion.

Discovery is covered by Hearing Examiner Rule (HER) 3.11, which provides that appropriate prehearing discovery is permitted, and that in response to a motion, the Examiner "may prohibit or limit discovery where the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal." HER 1.03(c) provides that the Examiner may look to the Superior Court Civil Rules for guidance where the HERs do not address a particular practice or procedure.

The Department asks that the Examiner quash Interrogatory 2, which asks for the identification of expert witnesses, but the Appellant has agreed to withdraw this Interrogatory, having already received the requested information. The Department also requests that Interrogatory 3 be quashed. This interrogatory seeks a detailed description of "the subject matter, facts and opinions to which each expert is expected to testify" and a summary of the grounds for each opinion. The Department asserts that the interrogatory seeks information that duplicates that required by the Examiner as part of preliminary and final witness lists. However the interrogatory seeks more detailed information than that required in witness lists and is appropriate discovery. The motion is **DENIED** as to Interrogatory 3.

The Department asks that the Examiner quash Appellant's Interrogatories 4 through 20. The Department correctly characterizes these interrogatories as seeking answers to highly specific, technical questions about the functioning of Meadowbrook Pond and other facilities". The Department asserts that it is unduly burdensome to require it to review numerous technical documents in detail and craft answers to the interrogatories that are sufficiently nuanced to be completely accurate. The Examiner agrees that this would be unduly burdensome for the Department but will not quash interrogatories. Instead, the Examiner will look to Civil Rule 33(c), which provides as follows:

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. *A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.*

Emphasis added. The Department agrees that the information required to answer Interrogatories 4 through 20 may be derived from its records. Therefore, the motion is **DENIED** as to Interrogatories 4 through 20, but the Department may respond to them in accordance with Civil Rule 33(c), with the following additional requirements:

1. To the extent that the Department knows the answer to one or more of the interrogatories and can state it in a manner that is sufficiently accurate to be provided under oath, the Department shall do so; and
2. For those interrogatories for which the Department specifies records from which the answers may be derived, the Department shall pay particular attention to the last sentence in Civil Rule 33(c) and provide as much detail as possible concerning the location of the responsive information.

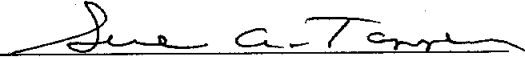
The Department asks that the Examiner quash Requests for Production 1 and 2, which seek documents used by the Department in answering the interrogatories, or referring or relating to the interrogatory answers. In light of this Order, these requests for production are no longer needed. The motion to quash Requests for Production 1 and 2 is **GRANTED**.

The Department also requests that Interrogatory 1 be quashed. That interrogatory seeks the identity of "all individuals or entities who possess information used in any manner to respond to these interrogatories and requests for production, and for each such person or entity, identify the interrogatory(ies) or request(s) as to which the individual or entity possesses information." The Department argues that the interrogatory is so vague as to preclude meaningful response. The Examiner agrees and restates the interrogatory in a more traditional form and with the requests for production removed. The motion is **DENIED** as to Interrogatory 1, which is restated as follows:

Please identify all individuals or entities who assisted in responding to these interrogatories, or provided information used to respond to them, and

identify each interrogatory for which the individual or entity assisted in preparing the response or provided information for the response.

Entered this 20th day of August, 2012.



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