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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File:
)
SEATTLE MOBILITY COALITION,) **W-18-013**
)
Appellant.) CITY’S REPLY ON IT’S MOTION TO
) STRIKE
From a Determination of Non-Significance issued)
by the Seattle City Council.)
)
)

Appellant raises nothing in its Response to Respondent City’s Motion to Strike that serves as a basis to Deny our Motion. Appellant’s attempt to include new evidence into the record three months after the testimony concluded in this appeal and on the verge of the Examiner’s decision must be rejected.

First, SMC’s reliance on HER 2.20 and 2.21 does not in any way support its position that SMC’s new evidence¹ should be considered by the Examiner months after SMC closed its presentation of evidence before the Examiner. HER 2.20 simply allows the Examiner to open the record for good cause and “may permit or require written briefs or oral argument.” Nowhere in HER

¹ For purposes of this reply, SMC’s new evidence includes the Declaration of Courtney Kaylor with attachments and purported “Transcript of Ketil Freeman” from an August 6, 2019 Seattle City Council Transportation and Sustainability Committee meeting briefing, all of which was included along with SMC’s Response to Supplemental Briefing, filed on September 11, 2019 (hereafter, “SMC’s new evidence”).

1 2.20 does it address reopening the record to receive new evidence in a matter. Likewise, HER 2.21
2 does not support SMC's argument that new evidence can be submitted into the record after the
3 conclusion of a hearing. Here, the Examiner did not hold open the record to receive new evidence.
4 Instead, on August 28, 2019, the Examiner reopened the record to request the parties to address
5 through briefing, or oral argument, not through new evidence, four specific questions with a particular
6 focus on presentation of relevant case law. It is disingenuous for SMC to pretend otherwise.

7 Moreover, to allow inclusion of new evidence by SMC three months after conclusion of the
8 testimony would be improper, unfair, and would significantly prejudice the Respondent.
9 Consequently, Respondent City's Motion to Strike this new evidence should be granted and an order
10 striking the new evidence and SMC's argument based on this new evidence should be issued.

11 To allow SMC to introduce new evidence three months after the close of the evidence is
12 improper, unfair and would prejudice the Respondent. It is improper to allow evidence because the
13 record was long closed except for additional closing briefing. The new evidence is not additional
14 closing briefing. On August 28, the Examiner did not invite the parties to submit new evidence.
15 Rather, he requested the parties to address his specific questions in additional closing argument. To
16 allow new evidence in response to the Examiner's request for briefing is improper.

17 It is also improper to allow new evidence months after the conclusion of testimony because
18 SMC cherrypicked select portions of a more than 40 minute long briefing to the Committee, attended
19 by Councilmembers O'Brien and Pacheco, to support its argument that the City improperly
20 piecemealed its environmental review of proposed Comp. Plan amendments which are necessary
21 before the contours of a TIF program can be created and adopted. It's improper because Respondent
22 City Council Central Staff did not have a chance to argue about the relevance of SMC's one-sided,
23 inaccurate and cherrypicked information into the record as this late date without the opportunity for

1 Respondent to submit rebuttal evidence and counterargument. However, this new evidence does not
2 establish or support SMC’s argument that Respondent piecemealed its environmental review of the
3 proposal. Respondent has been clear the entire time that adoption of Comp. Plan amendments that
4 identify TIF-eligible transportation projects are a necessary pre-condition to adopting a TIF program.
5 And, it’s been almost a year since Respondent issued a DNS on the Comp. Plan amendments. The
6 August 6 Committee meeting included a briefing to CM O’Brien and CM Pacheco about the basics
7 of TIFs, appropriate analysis and policy considerations. A possible schedule discussed by Mr.
8 Freeman is nothing more than that. Regardless, even if Council could conduct significant policy
9 analysis and work to develop a draft TIF program for Council consideration this fall or winter that
10 does not establish that Respondent piecemealed its environmental review back in 2018.

11 SMC’s appeal was filed in November 2018 and now ten months later, SMC attempts to
12 include additional “evidence” into the record. To allow SMC to submit this “new” evidence at this
13 late date, without Respondent’s opportunity to present rebuttal evidence and counterargument, would
14 significantly prejudice the Respondent in this appeal. It’s prejudicial because it delays a decision
15 from the Examiner, it doesn’t allow Respondent any opportunity to rebut such information or argue
16 about its relevance, among other reasons. The Respondent’s DNS decision is entitled to substantial
17 weight under state law. This continued delay and attempts to litigate its appeal with “new” information
18 months after its evidence was presented runs counter to the substantial weight standard. SMC’s
19 continued attempts to drag this appeal out any longer based on spurious alleged “new evidence”
20 cannot stand and its response to Respondent’s Motion to Strike is baseless.

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For all of these reasons, Respondent’s motion to strike must be granted.

DATED this 19th day of September 2019.

PETER S. HOLMES
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1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of Respondent City’s Reply on Its
3 Motion to Strike with the Seattle Hearing Examiner using its e-filing system.

4 I also certify that on this date, a copy of the same document was sent to the following
5 party listed below in the manner indicated:

6 Courtney Kaylor
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14 *Attorney for Appellant*
15 *Seattle Mobility*

16 DATED this 19th day of September 2019.

17 *s/Alicia Reise*
18 _____
19 Alicia Reise, Legal Assistant