

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE**

In the matter of the appeal of

Hearing Examiner File:

**MacDonald, Douglas B.**

**W-19-007**

from a SEPA Determination of Non-Significance  
(DNS) issued by the Director, Seattle Department  
Of Transportation

**Appellant's Motion to Exclude the  
City's Witnesses and Exhibits**

The prehearing order issued by the Hearing Examiner on January 24, 2020 set a deadline for the City to file with the Hearing Examiner and serve on the Appellant its Witness and Exhibit Lists prior to 5:00 p.m. on March 2, 2020. The City failed to serve its City's Final Witness and Exhibit List on the Appellant until March 3, 2020.

The untimely service of a required filing may, in a proceeding being prepared for hearing on a very rushed schedule, prejudice a party even if service might be achieved day after the deadline set in the Hearing Examiner's order.

In this instance, failure to file appears to have been caused by clerical error on the part of a staff member in the Office of the City Attorney. An attempt to achieve service by email was misaddressed and was probably returned to the sender as undeliverable; the error went undiscovered, and the deadline for service was missed. **See Attachment A.** The City's counsel contacted the Appellant the next morning suggesting that the service transmittal might have landed in the Appellant's spam folder. **See Attachment B.** After valuable time was spent getting to the bottom of the matter (the Appellant having to sort out for the City what had in fact happened by inspection of the email thread forwarded by the City's counsel and detecting the obvious addressing error), more time was spent trying to unscramble matters with the City before the Appellant regained course from an evening's work devoted to preparing for the contingency that the City had decided *not* to file an Exhibit and Witness List, as well as a portion of a day devoted to remedying the confusion the City's error had caused.

This is not a question of the failure to timely file the documents, but rather a question of failure to make timely service. Any argument by the City that the matter may be excused because the Appellant has not been prejudiced by the City's failure is presumptuous. One night and a very good portion of a day has been spent in burdening the Appellant's preparation. If the City's view is that a rule of "no harm, no foul" should govern the outcome of this motion, the Appellant does not agree that the City is entitled itself to claim "no harm" as if that were the end of the matter.

The Appellant's position is that the failure of the City to adhere to the deadline for service contained in the prehearing order has indeed derailed the Appellant's preparation such that a prejudice has occurred that should be responded to by the exclusion of the City's witnesses and exhibits listed on the City's Final Witness and Exhibit List in question. The Appellant respectfully so moves.

March 4, 2020.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Douglas B. MacDonald", with a long horizontal flourish extending to the right.

Douglas B. MacDonald  
Appellant, *pro se*.

902 North 79<sup>th</sup> Street Seattle WA 98103  
360 701 1786  
[dbmacdonal@earthlink.net](mailto:dbmacdonal@earthlink.net) 360 701 1786

## ATTACHMENT A

(Appellant's incorrect email address entered by the City highlighted for ease of reference. This email not received by the Appellant until attached to another email on March 3)

**From:** Reise, Alicia L <[Alicia.Reise@seattle.gov](mailto:Alicia.Reise@seattle.gov)>  
**Sent:** Monday, March 02, 2020 3:40 PM  
**To:** [dbdonal@earthlink.net](mailto:dbdonal@earthlink.net)  
**Subject:** MacDonald; Hearing Examiner No. W-19-007

Good Afternoon Mr. MacDonald:

Attached in pdf format are the following documents:

1. City's Final Witness & Exhibit List with 2 attachments e-filed with the Hearing Examiner moments ago; and
2. City's Final Witness & Exhibit List with Exhibits 1-4.

If you have any questions about these documents or have trouble with this transmission please contact me.

Thank you,

**Alicia Reise**  
Legal Assistant to  
Patrick Downs,  
Assistant City Attorney,  
Land Use Section

Civil Division  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7095  
Phone: 206-684-8247  
FAX: 206-684-8284  
[alicia.reise@seattle.gov](mailto:alicia.reise@seattle.gov)

## ATTACHMENT B

(City's counsel's misapprehended message to Appellant highlight for ease of reference. Counsel should have known there was and could not have been such an email).

**From:** "Downs, Patrick" <Patrick.Downs@seattle.gov>  
**Subject:** **FW: MacDonald; Hearing Examiner No. W-19-007**  
**Date:** March 3, 2020 at 8:26:21 AM PST  
**To:** Douglas MacDonald <dbmacdonal@earthlink.net>  
**Cc:** "Reise, Alicia L" <Alicia.Reise@seattle.gov>, "Downs, Patrick" <Patrick.Downs@seattle.gov>

Mr. MacDonald:

Alicia is out sick today but called and left me a voicemail this morning telling me that you sent her an email saying you did not receive the City's witness and exhibit list because you thought the email was spam.

Here is our witness and exhibit list again. **Would you please send me a copy of the email you sent her?**

**Patrick Downs**

Assistant City Attorney

Seattle City Attorney's Office  
Civil Division, Land Use Section  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7095  
Phone: 206-684-8616  
FAX: 206-684-8284  
[patrick.downs@seattle.gov](mailto:patrick.downs@seattle.gov)

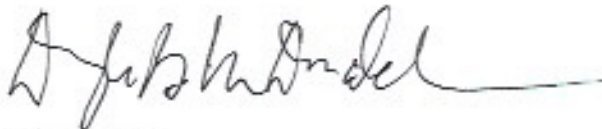
**CERTIFICATE OF SERVICE**

I certify that on this date I electronically filed a copy of **Appellant's Motion to Exclude the City's Witnesses and Exhibits** with the Seattle Hearing Examiner using its e-filing system.

I also certify that on this date a copy of the same document was sent via e-mail to the following party:

Patrick Downs  
Assistant City Attorney  
Seattle City Attorney's Office  
[Patrick.downs@Seattle.gov](mailto:Patrick.downs@Seattle.gov)

Dated this 4<sup>th</sup> March, 2020.

A handwritten signature in black ink, appearing to read "Douglas B. MacDonald", with a long horizontal flourish extending to the right.

Douglas B. MacDonald


BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

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 Prehearing Order to each person listed below, or on the attached mailing list, in the matter of Douglas B. MacDonald Hearing Examiner Files: W-19-007, in the manner indicated.

Party	Method of Service
<b>Appellant</b> Douglas B. MacDonald dbmacdonal@earthlink.net	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<b>Department</b> Joel Miller SDOT joel.miller@seattle.gov  Jill Macik jill.macik@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<b>Department Legal Counsel</b> Patrick Downs City Attorney's Office Patrick.Downs@seattle.gov  Alicia Reise Alicia.Reise@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: January 14, 2020

  
Galen Edlund-Cho  
Legal Assistant