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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)	Hearing Examiner File:
)	
)	W-19-007
DOUGLAS B. MACDONALD,)	
)	Department Reference 002180-19N
)	
from a Determination of Non-Significance)	City’s Response to Motion to Exclude City’s
issued by the Director, Seattle Department)	Final Witness and Exhibit List
of Transportation.)	
_____)	

I. INTRODUCTION

On Monday March 2, 2020 at 3:40, the City attempted to email its witness and exhibit list to Mr. MacDonald. The email address was in error and the list was not sent to Mr. MacDonald on Monday. After the email attempt, the City’s legal assistant left her desk to file copies with the Examiner’s office and left for the day. She did not realize the email did not go through until she checked her email Tuesday morning. The list was sent to Mr. MacDonald on Tuesday morning at 8:26.

The list included three witnesses Mr. MacDonald previously told the City he would call in an email sent to the City, and Mr. MacDonald commented on the SEPA checklist in December of 2019.

1 Mr. MacDonald has not been prejudiced by receiving the list Tuesday morning when he
2 already identified what City witnesses would testify and had seen the checklist. The inadvertent
3 email error is unlike the facts associated with the City's motion to exclude where Mr.
4 MacDonald never filed a witness and exhibit list. Mr. MacDonald's motion should be dismissed.

5 **II. FACTS**

6 On March 2, 2020 at 3:40, the City's legal assistant sent the City's witness and exhibit
7 list to an incorrect email address. After sending the email, she left her office to file the City's list
8 with the Examiner and then left for home. She did not discover the wrong email address until
9 Tuesday morning. The witness and exhibit list was sent to Mr. MacDonald Tuesday morning.

10 **III. ISSUE**

11 Because of a returned email, the City served its witness and exhibit list on Mr.
12 MacDonald Tuesday morning. The City's three witnesses were previously identified by Mr.
13 MacDonald and he had previously seen the SEPA checklist when he commented on it. Has the
14 overnight delay in receiving the list resulted in prejudice to Mr. MacDonald that should cause the
15 City's witnesses and exhibits to be excluded?

16 **IV. ARGUMENT**

17 Mr. MacDonald argues the City's witness and exhibits must be precluded because the
18 City was late in sending the list to him because of an inadvertent error in his email address. He
19 claims he has been prejudiced by losing time to prepare for the hearing because the City sent him
20 the exhibit and witness list Tuesday morning.

21 Mr. MacDonald's argument is distinguishable from the Examiner's order excluding his
22 witness and exhibit list. Mr. MacDonald never filed a witness and exhibit list and instead, he
23 sought to extend the deadline after the deadline occurred.

1 Further, receiving the City's list the next morning caused no prejudice to Mr.
2 MacDonald. He identified the City's three witnesses in an email to the City. And he has seen the
3 SEPA checklist he commented on. The only time Mr. MacDonald lost was to prepare the one-
4 page motion. The time Mr. MacDonald spent preparing his motion should be contrasted with Mr.
5 MacDonald's statement that after the Examiner's ruling on the City's motion, he took three days
6 off to prepare his taxes instead of preparing for the hearing. Mr. MacDonald cannot show
7 prejudice because he prepared his motion when he by his own choice decided to not prepare for
8 the hearing for three days.

9 The Examiner should determine that Mr. MacDonald cannot demonstrate prejudice due
10 to the inadvertent overnight delay in receiving the list.

11 V. CONCLUSION

12 Mr. MacDonald's motion should be denied.

13 Dated this 4th day of March 2020.

14 PETER S. HOLMES
15 Seattle City Attorney

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Seattle Office of Housing

1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of the **City’s Response to Motion**
3 **to Exclude the City’s Final Witness and Exhibit List and the Declaration of Patrick Downs**
4 with the Seattle Hearing Examiner using its e-filing system.

5 I also certify that on this date, a copy of the same document was sent by email to the
6 following party:

7 **Douglas B. MacDonald**
8 **dbmacdonal@earthlink.net**
9 *Appellant*

10 the foregoing being the last known address of the above-named party.

11 Dated this 4th day of March 2020, at Seattle, Washington.

12 s/ Ianne T. Santos
13 Legal Assistant to Patrick Downs