

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In re.

Hearing Examiner File Nos.:  
CWF-0001 - CWF-0405

**SEATTLE WATERFRONT LID  
ASSESSMENT HEARING**

**ORDER ON DISCOVERY**

On February 4, 2020, the City of Seattle ("City") sought clarification from the Hearing Examiner concerning depositions in this matter. The City submitted the following statement:

Following today's hearing, we had a chance to review the Hearing Examiner rules that Mr. Vancil indicated are applicable to this process (located for the last several weeks on the Office of the Waterfront's website). We confirmed that Hearing Examiner Rule 3.11, entitled "Discovery," was omitted from the rules. We also heard Mr. Vancil to say today that he selected the applicable rules after giving due consideration to the unique nature of this hearing. As such, and as I mentioned at today's hearing, the City has not understood that depositions would be allowed of any witnesses. This is also consistent with RCW 35.44, which does not provide for depositions. We assumed the removal of Hearing Examiner Rule 3.11 was intentional, in order to expedite what will already be an extensive proceeding.

We remain concerned that allowing depositions would result in significant delays in the hearing process. In addition, we believe the cross examination afforded to objectors and the City at the hearing would be sufficient to allow a meaningful opportunity for appropriate questions. The City would also be open to adding more cross examination time at the hearing if needed. We wanted to confirm the Hearing Examiner's intentions with respect to depositions (and any other discovery that may be requested) before proceeding further. We have copied counsel for objectors on this email who we understood (i) to also raise the issue of depositions today, and (ii) will be presenting their own expert testimony. If depositions are allowed, we will work with counsel along the lines that we discussed today after the break and return to you with any issues.

Below is the text of omitted Rule 3.11, for ease of reference:

**3.11 DISCOVERY**

Appropriate prehearing discovery, including written interrogatories, and deposition upon oral and written examination, is permitted. In response to a motion, or on the Hearing Examiner's own initiative, the Examiner may

compel discovery, or may prohibit or limit discovery where the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal. Unless provided otherwise by order, the Hearing Examiner should not be copied on discovery documents, or on correspondence and electronic mail about discovery matters.

At the hearing on February 4, 2020, two representatives for objectors indicated a wish to depose Robert Mcauley prior to the dates, set for presentation, of their objections. The City indicated that Mr. Mcauley would not be available from February 17-21, but that they could endeavor to see if he was otherwise available to accommodate Objector's request for depositions.

The listing of applicable Hearing Examiner Rules of Practice and Procedure ("HER"s) was not intended as a fully comprehensive, or exclusive, list of rules. Some rules from the original set of HERs were excluded from applicability in these proceedings, as they were not appropriate (as suggested by the City); however, others such as rules concerning discovery and motions were excluded, not as a means of excluding such practices, but because they were simply unwieldy or confusing in form with regard to this hearing.

HER 1.03.c provides:

When questions of practice or procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process. The Hearing Examiner may look to the Superior Court Civil Rules for guidance.

Reference to RCW 35.44 is unhelpful in this instance as the statute is largely silent with regard to procedures applicable to an assessment hearing.

In this instance, some efficiency may be gained by allowing depositions of Mr. Mcauley prior to respective objectors presenting their case. Conversely, this request has been submitted at a late date - depending on the objector, two working days before the hearing or at the hearing - and arranging for depositions will not be allowed to delay the hearing's progress.

Depositions of Robert Mcauley will be allowed, if they can be accommodated at a mutually agreeable time for the parties. The parties should work in good faith to identify a date for deposing Mr. Mcauley. If the parties are not able to arrange mutually agreeable dates and times for such depositions, then the objectors will need to rely on their opportunity to cross-examine Mr. Mcauley. On review of the case calendar, current dates set for argument by objectors will not be changed to accommodate holding a deposition prior to presenting an objection.

Entered this 5<sup>th</sup> day of February, 2020.

  
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Ryan Vancil, Hearing Examiner