

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In re.

**SEATTLE WATERFRONT LID
ASSESSMENT HEARING**

Hearing Examiner Files:
CWF-0233; 0318; and 0409-
0441

**ORDER ON MOTION TO
STRIKE**

Objectors for CWF-0233, 0318, and 0409-0441, (“Objectors”) filed a Motion to Strike on May 4, 2020. The Motion requests the Hearing Examiner to strike portions of declarations from Robert Macaulay, Paul Bird, and Mark Lukens filed on behalf of the City of Seattle on April 30, 2020, in response to declarations filed by Objectors on April 16, 2020.

Objectors presented portions of their cases by using written declarations in lieu of live witness testimony. The Hearing Examiner provided the City an opportunity to submit written responsive declarations to Objectors’ declarations.

The Motion complains that the declarations filed by the City “primarily rebut live or video testimony of Objectors’ witnesses, and far exceed the scope of written testimony provided in Objectors’ declarations.”

The City responded to the Motion, arguing that: (1) the Motion is moot, as the City can make these same points during its upcoming case in chief; (2) the contested portions of the City’s declarations are responsive to points made in Objectors’ declarations; (3) Objectors have created a procedural rigidity not required of the City in the form of its response to Objector’s declarations; and, (4) Objectors have an opportunity to submit replies to the City’s responsive declarations.

The opportunity for filing responsive declarations was given to allow responses to declarations filed by Objectors, and not to respond to live testimony provided by Objectors witnesses. Regardless of whether Objectors may later address anything the City has raised in its responsive declarations through a reply declaration, or as part of cross-examination of City witnesses later in the process, this does not cure the problem of a party submitting materials to the record out of turn. Parties to litigation expect fair and equal opportunities to present arguments and evidence. In these consolidated matters of the Waterfront LID Assessment Hearing, even *pro se* objectors have been prohibited from submitting materials that are untimely or beyond the bounds set by the Hearing Examiner for submitting exhibits or testimony. The City must be held to the same standard, and therefore, declaration materials that were addressing live testimony from Objectors’ witnesses, that the City had an opportunity to cross-examine, should not be allowed into the record. Conversely, the mere fact that a live testimony witness discussed an issue or facts that were also addressed by a witness in a declaration does not remove an issue or facts from the scope of what may be addressed in a responsive declaration.

The City is correct that within the context of responsive declarations that are presented, solely to address the declarations submitted by the Objectors, the City is at liberty to respond to those declarations as it sees fit. The Hearing Examiner will not engage in a line by line analysis of the City's responsive declarations to determine if they address topics or issues raised by Objectors' declarants. The City was invited to provide responses, and where the responsive declarations fail in this regard, that issue should be addressed by Objectors in any reply.

In accordance with the above, the Objectors' Motion to Strike is **GRANTED** in part, and **DENIED** in part.

The Motion is granted with respect to portions of the Declaration of Robert Macaulay dated April 30, 2020 ("Macaulay Declaration") that directly address only the analysis of Dr. Crompton's report, use of that report by ABS, and any testimony from Dr. Crompton. The following paragraphs should be stricken from the Macaulay Declaration: paragraphs 14, 15, and 16. The City must submit a corrected version of the Macaulay Declaration with these paragraphs omitted, which corrected version will be entered into the record.

The Motion is denied as to all other portions of the Macaulay Declaration, and the declarations of Paul Bird, and Mark Lukens.

In a May 6, 2020, Order on Motion to Extend Deadline for Filing Replies and Schedule for Motion to Strike, the Examiner stated, "If the Motion to Strike is denied, a new deadline for the additional response required from Objectors will be set." The Motion has been denied in part, therefore, Objectors may file a reply to the portions of City declarations for which its Motion has been denied. Any reply must be submitted no later than 5 PM Tuesday, June 2, 2020.

Objectors may file a reply is to:

Declaration from Robert Macaulay paragraphs 5-7, 10-13, and 17-27.

Declaration of Paul Bird paragraphs 7-15, 20-23, and 27.

Declaration of Mark Lukens paragraphs 7-10, everything except the first sentence of paragraph 12, and paragraphs 14, 16, 18, 19, and 21-23.

Entered this 28th day of May, 2020.

s/Ryan Vancil
Ryan Vancil, Hearing Examiner