

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:  
**MUP-21-016 and  
MUP-21-017 (ECA CU)**

**MAGNOLIA COMMUNITY COUNCIL  
AND OTHERS; and, FRIENDS OF THE  
LAST 6,000,**

Department Reference:  
3028072-LU

from a decision issued by the Director,  
Seattle Department of Construction  
and Inspections.

**ORDER ON APPLICANT’S  
MOTION TO QUASH**

**1. Motion.** The Applicant Oceanstar, LLC moved to quash eight subpoenas from Magnolia Community Council and Others (“MCC”).<sup>1</sup> MCC requested discovery to support its appeal issues on whether the Department adequately mitigated impacts under SMC 23.42.042(B) in approving a critical areas conditional use permit for two residences.

**2. Criteria for Subpoena Issuance.** A party seeking a subpoena must “indicate the relevance of the materials subpoenaed to the issues on appeal, and demonstrate the reasonableness of the scope of the subpoena sought.”<sup>2</sup> If this showing is not made, the Examiner may limit discovery. “[T]he Examiner may ... prohibit or limit discovery where the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.”<sup>3</sup>

**3. Discovery Request – Building Design, Use, and Disposition.** MCC requested subpoenas for:

All Documents, including without limitation, communications or agreements among representatives of Oceanstar, LLC, Global<sup>4</sup> Seas, LLC, Nina Fisheries, Inc., Robert Desautel, Walter Kuhr, Jr., Lil Kuhr and Kathy Shepherd regarding the design, use, or potential disposition of the Buildings.

Minutes of all meetings that discuss or refer to the design, use, or potential disposition of the Buildings.

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<sup>1</sup> The subpoena requests were submitted by motion to the Examiner’s Office for Oceanstar, LLC; Global Seas, LLC; Nina Fisheries, Inc.; Robert Desautel; Walter Kurh, Jr.; Kathy Shepard; Lil Kuhr; and Gelotte Hommas Drivdahl.

<sup>2</sup> HER 3.12(b).

<sup>3</sup> HER 3.11.

<sup>4</sup> The term used in the subpoenas, “Golden”, is corrected throughout.

All Documents, including any written communications of any kind with any person or entity, that discuss or refer to the design, use, or potential disposition of the Buildings that are not included in documents requested ... [above].<sup>5</sup>

Appeal issues relate to whether the Director erred in not imposing mitigation to address north side stair use and views.<sup>6</sup> Single-family home disposition is not before the Examiner. Home design and use are relevant to the extent the approved design and use will impact stair usage or views. However, the question before the Examiner is not whether the Applicant could have or should have designed the project differently. The question is whether the **Department** erred in how it conditioned the project.<sup>7</sup> Because it is the Department's, rather than the Applicant's decisions which are at issue, this narrows the issue. Deciding whether there was error requires understanding what was approved and whether the approved design creates impacts which, under the code, the Department erred in not mitigating. The discovery requested goes beyond the issues presented.

Home design is disclosed on the approved plan set.<sup>8</sup> There is no allegation that there is any ambiguity in what was approved. However, a narrower request for documents addressing project impacts on views and stair use would be relevant.

As currently worded, the discovery questions encompass electronic and written correspondence from Global Seas' eight employees dating back to before the 2017 project presubmittal conference. Global Seas holds weekly meetings at which handwritten minutes are taken. Minutes from 2017-2021 include 192 sets of handwritten minutes. The Applicant estimates that as now worded, hundreds or thousands of documents would likely result, and the request could not be completed in the two weeks the subpoena requests. This type of production would be unduly burdensome for the Applicant. A narrowed request tailored to the issues would presumably avoid undue burden.

**4. Discovery Request – Admiral House Use.** MCC requested subpoenas for:

All Documents, including without limitation, communications or agreements among representatives of Oceanstar, LLC, Global Seas, LLC, Nina Fisheries, Inc., Robert Desautel, Walter Kuhr, Jr., Lil Kuhr and Kathy Shephard regarding the use of the Admiral's House from 2013 to the present.

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<sup>5</sup> See subpoenas, emphasis added.

<sup>6</sup> Order, pp. 3-4.

<sup>7</sup> The Examiner does have a question on conditional use permit mitigation scope when the permit is used to address critical areas, as opposed to the more traditional conditional use which addresses use permissibility. The mitigation assessment may change when a use is permitted outright rather than conditionally. The order does not address this question.

<sup>8</sup> See Kaylor Declaration, Ex. A.

Admiral House use is not an appeal issue. Producing documents independent of the project dating back to 2013 would be unduly burdensome. The request encompasses due diligence materials related to property purchase, including allowed uses, leases, payment records, and correspondence back to 2013. It would also include documents on maintenance and repair, and agreements and correspondence for weddings and events since 2013. In the last eight years, hundreds of weddings and other events have occurred with several companies using the house for office space. A narrowed request for documents addressing project stair use in conjunction with the Admiral's House would presumably be relevant and could be tailored to avoid undue burden.

**5. Discovery Request – Covenants, Easements, and MOU.** MCC requests documents referencing various covenants and an MOU.

All documents that refer to or discuss the View Corridor and Landscape Maintenance Covenant, dated December 13, 2012, last recorded under King County Recorder No. 20130613001828.

All Documents that refer to or discuss the Historic Preservation Easement and Covenants, dated June 7, 2013, and recorded under King County Recorder No. 20130611002100.

All Documents that refer to or discuss a 2011 Memorandum of Agreement or any other agreement among the Federal Highway Administration, State Historic Preservation Office, Washington Department of Transportation, City of Seattle, and Pacific Northwest Communities, LLC.

No covenant or agreement consistency issues are before the Examiner<sup>9</sup> though these covenants/agreements may be considered as background information. The request for all documents referencing these agreements dating to 2013 is outside appeal scope, and such a search would be unduly burdensome. However, a request for documents addressing the project's relationship to these covenants/agreements would presumably be relevant and not present an undue burden to produce.

**6. Discovery Request – Landmarks Preservation Board.** MCC requests Landmarks Preservation Board related documents.

All Documents, including without limitation, any written communications of any kind with the Landmarks Preservation Board ("Board") or others, that discuss or refer to Admiral's House status as a designated landmark or the impact of Oceanstar's construction practices to construct the Buildings on the Admiral's House and its designated landmark area on the Property.

Admiral House landmark status is not before the Examiner, and the project is outside any landmark area. Communications with the Landmarks Preservation Board

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<sup>9</sup> Order, p. 2.

addressing project impacts on Admiral House are potentially relevant. If the request is tied to what is before the Examiner and avoids unduly burdensome production, it would presumably comply with the HER.

7. **Summary.** MCC's subpoena requests are outside the scope of the issues before the Examiner and would be unduly burdensome, so should be denied. This ruling does not foreclose subpoena requests tailored to HER 3.12(b) and HER 3.11 criteria. MCC should revise the subpoenas and coordinate with opposing counsel on the revised requests to minimize the need for a second Examiner discovery ruling.

MCC requested a ruling which would require more than standard HER practices for party consultation. This is not a particularly unwieldy matter based on party number or complexity, so current discovery practices should suffice. The parties are asked to confer, but if discovery disputes are not resolved, the Examiner will address them.

### ORDER

MCC's motion for subpoena issuance is **DENIED**. Revised subpoenas addressing the issues this order outlines may be submitted following consultation with counsel for the parties the subpoenas are directed to.

Entered July 19, 2021.

/s/Susan Drummond  
Susan Drummond, Deputy Hearing Examiner

**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 **Order on Motion to Quash** to each person listed below, or on the attached mailing list, in the matters of **MAGNOLIA COMMUNITY COUNCIL AND OTHERS & FRIENDS OF THE LAST 6,000**, Hearing Examiner Files: **MUP-21-016 (CU) & MUP-21-017 (ECA)** in the manner indicated.

<b>Party</b>	<b>Method of Service</b>
<b>Appellant (MUP-21-016)</b> Edward R. Coulson Magnolia Community Council and Others 206-953-2579 coule@schweetlaw.com  <b>Appellant (MUP-21-017)</b> Diana Gardiner Friends of the Last 6,000 206-484-5496 diana.shurtlieff@gmail.com	<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>Appellant Legal Counsel (MUP-21-017)</b> Margaret M. Boyle Boyle Martin Thoeny, PLLC 206-217-9400 margaret@boylemartin.com	<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>Applicant</b> Tom Brown GHD 425-828-3081 tomb@ghdarch.com	<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

<p><b>Applicant Legal Counsel</b>  John C. McCullough  McCullough Hill Leary, PS  206-812-3388  jack@mhseattle.com</p> <p>Courtney Kaylor  McCullough Hill Leary, PS  206-812-3388  courtney@mhseattle.com</p> <p>David P. Carpmann  McCullough Hill Leary, PS  206-812-3388  dcarpmann@mhseattle.com</p>	<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
<p><b>Department</b>  Michael Houston  SDCI  206-727-3885  michaelt.houston@seattle.gov</p>	<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
<p><b>Mailing</b>  Erika Ikstrums  SDCI  206-684-3160  erika.ikstrums@seattle.gov</p> <p>Maddi Warnock  McCullough Hill Leary, PS  206-812-3388  mwarnock@mhseattle.com</p>	<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: July 19, 2021

/s/ Galen Edlund-Cho  
Galen Edlund-Cho  
Legal Assistant