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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE

10 In the Matter of the Appeal of

11
12 MAGNOLIA COMMUNITY COUNCIL AND
13 OTHERS; and FRIENDS OF THE LAST 6,000

14 From a decision issued by the Director, Seattle
15 Department of Construction and Inspections
16
17

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

Department Reference: 3028072-LU

DECLARATION OF COURTNEY A.
KAYLOR IN SUPPORT OF
APPLICANT'S RESPONSE TO MCC
MOTION FOR CONTINUANCE

18 I, Courtney A. Kaylor, declare:

19 1. I am competent to testify and make this declaration based on my personal
20 knowledge.
21

22 2. I am one of the attorneys for the applicant in this matter, Oceanstar LLC
23 ("Applicant").
24

25 3. Attached to this declaration are true and correct copies of electronic
26 correspondence, documented as exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N.
27

28 DECLARATION OF COURTNEY A. KAYLOR IN
SUPPORT OF APPLICANT'S RESPONSE MCC MOTION
FOR CONTINUANCE – Page 1

McCULLOUGH HILL LEARY, PS

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
206.812.3388
206.812.3389 fax

4. Discussions regarding settlement negotiations have been redacted.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed this 4th day of August, 2021, at Seattle, Washington.

Courtney Kaylor

Courtney A. Kaylor

EXHIBIT A

David Carpman

From: Ted Coulson <coule@schweetlaw.com>
Sent: Thursday, May 27, 2021 10:33 AM
To: Courtney Kaylor; margaret@boylemartin.com; David Carpman; Jack McCullough; tomb@ghdarch.com; Houston, MichaelT
Cc: Jeanne Coulson
Subject: RE: MCC appeals

Thanks for the response, Courtney. Discovery can await the motion, although I am concerned about the schedule getting compressed because of other deadlines. [REDACTED]

Ted Coulson
206-953-2579

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Wednesday, May 26, 2021 8:23 AM
To: Ted Coulson <coule@schweetlaw.com>; margaret@boylemartin.com; David Carpman <dcarpman@mhseattle.com>; Jack McCullough <jack@mhseattle.com>; tomb@ghdarch.com; Houston, MichaelT <MichaelT.Houston@seattle.gov>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>
Subject: RE: MCC appeals

Hello Ted – I appreciate you reaching out to coordinate.

I have concerns that the discovery you describe relates in significant part to matters over which the Examiner lacks subject matter jurisdiction. Because of that, I would suggest that discovery wait until after the Examiner's decision on our motion so that it can be appropriate in scope.

[REDACTED]

Courtney

Courtney Kaylor
Partner

McCULLOUGH HILL LEARY, PS

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From: Ted Coulson <coule@schweetlaw.com>
Sent: Tuesday, May 25, 2021 1:41 PM
To: margaret@boylemartin.com; Courtney Kaylor <courtney@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Jack McCullough <jack@mhseattle.com>; tomb@ghdarch.com; Houston, MichaelT <MichaelT.Houston@seattle.gov>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>
Subject: MCC appeals

Hello:

Thanks to everyone for their cooperation at the prehearing conference. I would like to address the discovery and mediation issues that we agreed to discuss outside the conference.

Discovery. Although further investigation and research may change our needs, at this point the MCC group anticipates that MCC will need to take the depositions of the two individuals connected with Oceanstar, Robert Desautel and Walter Kuhr, Jr., and possibly Tom Brown. MCC also anticipates some basic document discovery, such as communications regarding the design, construction, and future use of the property, minutes or notes of meetings regarding the property, development agreements regarding the property, etc. MCC is willing to conduct discovery without the necessity of formal motions before the hearing examiner. Would Oceanstar and Friends of the Last 6000 agree to conduct this discovery without the necessity of formal motions as well?

[REDACTED]

Thanks for your consideration. I look forward to our cooperative efforts to resolve these appeals.

Ted Coulson
206-953-2579

EXHIBIT B

David Carpman

From: Courtney Kaylor
Sent: Tuesday, June 22, 2021 11:21 AM
To: Ted Coulson; Margaret Boyle
Cc: David Carpman
Subject: FW: Ex Parte Motion for Issuance of Subpoenas, MUP 21-016

Ted – Following up on our discussions about noting depositions, I neglected to look at my own calendar. I am out the week of July 12-16. We can look at July 19 and 20, but the second date range you suggested, July 30-August 9, might work better. (I am out August 9 but in the office the remaining dates in that range.) I'll check both with my clients.

Courtney Kaylor
Partner

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From: Courtney Kaylor
Sent: Tuesday, June 22, 2021 10:43 AM
To: Ted Coulson <coule@schweetlaw.com>; Margaret Boyle <margaret@boylemartin.com>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Jack McCullough <jack@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Maddi Warnock <mwarnock@mhseattle.com>; tomb@ghdarch.com
Subject: RE: Ex Parte Motion for Issuance of Subpoenas, MUP 21-016

Hello Ted – I do not see an attachment. Can you resend?

Courtney Kaylor
Partner

MCCULLOUGH HILL LEARY, PS

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From: Ted Coulson <coule@schweetlaw.com>

Sent: Tuesday, June 22, 2021 9:42 AM

To: Margaret Boyle <margaret@boylemartin.com>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Jack McCullough <jack@mhseattle.com>; Courtney Kaylor <courtney@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Maddi Warnock <mwarnock@mhseattle.com>; tomb@ghdarch.com

Subject: Ex Parte Motion for Issuance of Subpoenas, MUP 21-016

Howdy:

Here is our Ex Parte Motion for Issuance of Subpoenas which we have filed with the Office of the Hearing Examiner. Just so you know, we seem to have problems with the e-file system on their website.

Thanks,

Edward R. (Ted) Coulson
206-953-2579

EXHIBIT C

David Carpman

From: Courtney Kaylor
Sent: Tuesday, June 29, 2021 10:20 AM
To: Ted Coulson
Cc: David Carpman
Subject: RE: MCC & Friends of the Last 6000 appeals

Ted – 2:30 works. I'll send an invite with a call in number so the three of us can participate. [REDACTED]
[REDACTED]

Courtney

Courtney Kaylor
Partner

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From: Ted Coulson <coule@schweetlaw.com>
Sent: Monday, June 28, 2021 5:15 PM
To: Courtney Kaylor <courtney@mhseattle.com>; Margaret Boyle <margaret@boylemartin.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: RE: MCC & Friends of the Last 6000 appeals

Hi Courtney:

I have a HOA board meeting at 1:00 tomorrow afternoon (notice of which was sent out on Friday). So, 2:30 would work best for me.

Thanks,

Ted

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Monday, June 28, 2021 4:29 PM
To: Ted Coulson <coule@schweetlaw.com>; Margaret Boyle <margaret@boylemartin.com>

Cc: David Carpman <dcarpman@mhseattle.com>
Subject: RE: MCC & Friends of the Last 6000 appeals

Hello Ted – Tomorrow afternoon I am open any time before 3:30. How about 1 pm?

Courtney

Courtney Kaylor
Partner

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From: Ted Coulson <coule@schweetlaw.com>
Sent: Thursday, June 24, 2021 1:46 PM
To: Courtney Kaylor <courtney@mhseattle.com>; Margaret Boyle <margaret@boylemartin.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: RE: MCC & Friends of the Last 6000 appeals

Hi Courtney, thanks for the email. I can talk on Tuesday afternoon, not morning.

I would prefer to have the depositions in person, obviously appropriately dealing with any risk factors or medical issues anyone might have. Under the governor's guidelines, and from what I understand is happening in local practice, in person depositions are returning. Given how long we have been talking about depositions and wanting to get them done sooner rather than later, I would like everyone to be proactive about finding dates that work. Your reservation of rights is noted, I don't have a problem following any guidance that might come from the Hearing Examiner.

MCC has not made any decisions about expert witnesses at this point but at least anticipates being able to comply with the prehearing order schedule.

Please feel free to discuss the deposition schedule before Tuesday afternoon if you like.

Thanks,

Ted Coulson

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Thursday, June 24, 2021 8:37 AM
To: Ted Coulson <coule@schweetlaw.com>; Margaret Boyle <margaret@boylemartin.com>
Cc: David Carpmann <dcarpmann@mhseattle.com>
Subject: MCC & Friends of the Last 6000 appeals

Ted – [REDACTED]

On the depositions, let's reserve July 21 and 23 for Bob Desautel and Walter Kuhr's depositions. They will need to be virtual since they will likely not be in town. We are talking with the architects later today and I'll get back to you on scheduling their depositions. Please note that we reserve our right to oppose depositions or seek limitations on their scope depending on the outcome of the motion to dismiss.

Also, if either of you will have expert witnesses, we would like to depose them as well. Please let me know if this will be the case and we can get dates set for those.

Courtney

Courtney Kaylor
Partner

McCULLOUGH HILL LEARY, PS

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EXHIBIT D

David Carpman

From: Ted Coulson <coule@schweetlaw.com>
Sent: Thursday, July 1, 2021 3:49 PM
To: Courtney Kaylor
Cc: David Carpman
Subject: RE: Call Thursday
Attachments: Motion for Issuance of SDT v.2.docx

Hi Courtney:

Thanks for the email. We have several areas of disagreement. I attach a modified motion for issuance of subpoenas for your review. I intend to use the same subpoenas duces tecum, with the dates modified (I was waiting to discuss production dates with you this afternoon). I suggest you take a look at the revised motion and give me a call to discuss the other issues you raise below, rather than delaying resolution even longer while I wait a couple days for a response. I am hopeful your email is just not a list of ultimatums, this is supposed to be a cooperative process.

Thanks, I look forward to hearing from you. I am agreeable to working this out, but do not want to delay getting the subpoenas issued.

Ted Coulson
206-953-2579

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Thursday, July 1, 2021 3:08 PM
To: Ted Coulson <coule@schweetlaw.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: RE: Call Thursday

Hello Ted – Here's a follow up from our last call. At this point, I do not see a need to talk this afternoon. Let me know if you think there's anything we should discuss today.

I've reviewed your document production request. As written several of the requests are burdensome and overbroad as they are outside the scope of the appeal:

- All of the requests should be limited to seek documents only within the time range relevant to the application before the Examiner, submitted in May 2019.
- Requests #1, 3 and 4 seek documents relating to "the design, use, or potential disposition of the Buildings." The use and disposition of the buildings is not an issue in the appeal. The request should be limited to the design.
- Item #2 seeks documents relating to the Admiral's House. This is outside the scope of the appeal.

Let me know if you will agree to modify these requests.

On the depositions, Eric Drivdahl is available and holding July 22. Tom Brown is available and holding July 19 and 20. Please confirm that July 22 works for you, and let me know whether you'd prefer July 19 or 20. The witnesses and I

are available for Zoom depositions but not in-person depositions. I would like to agree to the scope of these depositions but, barring that, will need to get a determination from the Examiner on their scope. Please let me know what subjects you plan to cover with them so we can proceed. At this point, as I mentioned on the telephone, I do not see why you would need to depose the owners in addition to the architects based on the issues remaining in the case. If you can send me an explanation, we can discuss and attempt to resolve this without the help of the Examiner.

Courtney Kaylor
Partner

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From: Ted Coulson <coule@schweetlaw.com>
Sent: Tuesday, June 29, 2021 6:14 PM
To: Courtney Kaylor <courtney@mhseattle.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: RE: Call Thursday

OK with me.

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Tuesday, June 29, 2021 5:20 PM
To: Ted Coulson <coule@schweetlaw.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: Call Thursday

Ted – Would Zoom work for you for our call Thursday? It might be helpful to be able to share images.

Courtney

Courtney Kaylor
Partner

McCULLOUGH HILL LEARY, PS

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EXHIBIT E

David Carpman

From: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Sent: Friday, July 2, 2021 11:14 AM
To: Ted Coulson; Courtney Kaylor
Cc: Jeanne Coulson; tomb@ghdarch.com; Maddi Warnock; David Carpman; Jack McCullough; Ikstrums, Erika; Houston, MichaelT; Margaret Boyle
Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

Hello, Mr. Coulson.

The Examiner will allow the Appellant's reply to the Applicant's response. The Appellant is free to file the reply within five business days from the filing date of the Applicant's response.

Sincerely,



Galen Edlund-Cho

Legal Assistant

City of Seattle [Office of Hearing Examiner](#)

700 Fifth Avenue, Suite 4000, Seattle, WA 98104

Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

From: Ted Coulson <coule@schweetlaw.com>
Sent: Friday, July 02, 2021 10:42 AM
To: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>; Courtney Kaylor <courtney@mhseattle.com>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>; tomb@ghdarch.com; Maddi Warnock <mwarnock@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; McCullough, Jack <jack@mhseattle.com>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Margaret Boyle <margaret@boylemartin.com>
Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

CAUTION: External Email

Thank you for the email, Galen. In fairness, MCC respectfully requests the opportunity to file a reply and for oral argument under HR 2.16(c).

Thanks,

Edward R. (Ted) Coulson
206-953-2579

From: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Sent: Friday, July 2, 2021 10:27 AM
To: Courtney Kaylor <courtney@mhseattle.com>; Ted Coulson <coule@schweetlaw.com>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>; tomb@ghdarch.com; Maddi Warnock

<mwarnock@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; McCullough, Jack <jack@mhseattle.com>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Margaret Boyle <margaret@boylemartin.com>

Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

Good morning,

The Examiner will allow the Applicant to file a response brief to the Appellant's motion. The Applicant must file and serve the response by Wednesday, July 6, 2021, no later than 5:00 p.m.

Sincerely,



Galen Edlund-Cho

Legal Assistant

City of Seattle [Office of Hearing Examiner](#)

700 Fifth Avenue, Suite 4000, Seattle, WA 98104

Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

From: Courtney Kaylor <courtney@mhseattle.com>

Sent: Thursday, July 01, 2021 5:33 PM

To: Ted Coulson <coule@schweetlaw.com>; Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>

Cc: Jeanne Coulson <mjeannecoulson@gmail.com>; tomb@ghdarch.com; Maddi Warnock <mwarnock@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; McCullough, Jack <jack@mhseattle.com>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Margaret Boyle <margaret@boylemartin.com>

Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

CAUTION: External Email

All – To set the record straight, I provided Mr. Coulson with my written objections to the extremely broad scope of discovery today, at 3:08 pm. He provided no substantive response, but at 3:49 pm requested I call him. He then filed his motion at 4:54 pm. It is a misrepresentation to imply I have not consulted in good faith.

Mr. Coulson has chosen to file a motion, whether required or not. The Hearing Examiner rules provide for a response opportunity to all motions. HER 2.16.

Courtney Kaylor

Partner

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From: Ted Coulson <coule@schweetlaw.com>
Sent: Thursday, July 1, 2021 5:25 PM
To: Courtney Kaylor <courtney@mhseattle.com>; Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>; tomb@ghdarch.com; Maddi Warnock <mwarnock@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Jack McCullough <jack@mhseattle.com>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Margaret Boyle <margaret@boylemartin.com>
Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

Hi Galen:

MCC and the rest of my group of course disagree. Prior to filing the motion, I invited Ms. Kaylor to discuss any objections with me after she cancelled a scheduled conference call this afternoon less than an hour before the call. I invited Ms. Kaylor to give me a call to discuss her objections, but have not heard from her.

Ms. Kaylor is attorney of record solely for Oceanstar, LLC, the Applicant. I do not see that the rules provide for a responsive brief to an ex parte motion. HR 3.12(f) provides that unless otherwise allowed, any motion to limit or quash a subpoena shall be filed within 5 days after the date the subpoena was received. Prior to bringing such a motion, or trying to avoid the rule by asking for time to file a responsive brief, CR 26(i), applicable by HR 1.03(c), requires Ms. Kaylor to schedule a conference of counsel. I of course look forward to the conference and will participate in good faith, as I assume Ms. Kaylor will.

Unfortunately, given the fast approaching case deadlines and delays from the motion to dismiss, time is of the essence and threatens MCC's ability to proceed with its appeal, so MCC objects to briefing outside the rules.

Please let me know if you have any questions or need any additional information from me.

Thanks,

Edward R. (Ted) Coulson
206-953-2579

From: Courtney Kaylor <courtney@mhtseattle.com>
Sent: Thursday, July 1, 2021 5:04 PM
To: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Cc: Jeanne Coulson <mjeannecoulson@gmail.com>; tomb@ghdarch.com; Maddi Warnock <mwarnock@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Jack McCullough <jack@mhseattle.com>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Margaret Boyle <margaret@boylemartin.com>; Ted Coulson <coule@schweetlaw.com>
Subject: RE: Ex Parte Motion for Issuance of Subpoenas (REVISED)

Mr. Edlund-Cho – The Applicant would appreciate the opportunity to file a responsive brief on the schedule provided in the Hearing Examiner rules before the Examiner rules, since the requested discovery is burdensome and requests information far outside the scope of this appeal.

Courtney Kaylor

Partner

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From: Ted Coulson <coule@schweetlaw.com>

Sent: Thursday, July 1, 2021 4:54 PM

To: Margaret Boyle <margaret@boylemartin.com>; Houston, MichaelT <MichaelT.Houston@seattle.gov>; Ikstrums, Erika <Erika.Ikstrums@seattle.gov>; Jack McCullough <jack@mhseattle.com>; Courtney Kaylor <courtney@mhseattle.com>; David Carpman <dcarpman@mhseattle.com>; Maddi Warnock <mwarnock@mhseattle.com>; tomb@ghdarch.com

Cc: Jeanne Coulson <mjeannecoulson@gmail.com>

Subject: Ex Parte Motion for Issuance of Subpoenas (REVISED)

Howdy:

Here is an Ex Parte Motion for Issuance of Subpoenas (REVISED) which is being filed with the Hearing Examiner. Given the problems in the past, please let me know if you have any problems opening the document.

Thanks,

Edward R (Ted) Coulson

206-953-2579

EXHIBIT F

David Carpman

From: Courtney Kaylor
Sent: Wednesday, July 7, 2021 2:40 PM
To: 'Ted Coulson'
Cc: David Carpman
Subject: MCC appeal - discovery

Hello Ted – I'm following up on discovery in this matter. As you are aware, we have a disagreement about the appropriate scope of subpoenas for documents, which you have tendered to the Examiner. The Examiner will rule on that, but meanwhile, if we can come to an agreement about a request for documents that are related to the remaining issues in the case and not unduly burdensome for my client to produce, I would be happy to work with you to do that. To that end, more specific information about what you are looking for and how it relates to the remaining live issues would be helpful.

With regard to depositions, at this time I do not believe that the depositions of Bob Desautel or Walter Kuhr are necessary. The individual owners' use of the homes is not relevant to this permit appeal. With regard to views and any other potential impact to adjacent properties, Bob and Walter are commercial fishermen, not architects or lawyers, and they rely on their professional consultants (and attorneys) to address these issues.

Two of those consultants - Eric Drivdahl and Tom Brown - are holding dates for depositions. However, before we agree to these, we need to reach agreement on the scope of the questions. Under the Examiner rules these need to be relevant to pending appeal issues and reasonable in scope. Can you please identify the topics you expect to cover with them? Assuming we can reach agreement on scope, at this time, Eric Drivdahl is holding July 22. Tom Brown is holding the July 20 and 22. Please confirm that these dates work for you. As we discussed, they (and I) are available for Zoom depositions only at this time. These expert witnesses will need to be compensated by your client for their time. Since they are both with the same architecture firm and working on the same project, their knowledge substantially overlaps. This is your choice, of course, but if your clients would like to save money by deposing only one of them, please let me know so I can tell the other to release his hold on the deposition date.

Courtney

Courtney Kaylor
Partner

McCULLOUGH HILL LEARY, PS

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EXHIBIT G

David Carpman

From: Ted Coulson <coule@schweetlaw.com>
Sent: Thursday, July 8, 2021 5:32 PM
To: Courtney Kaylor
Cc: David Carpman
Subject: RE: MCC appeal - discovery

Hi Courtney:

Thank you for your email. My comments are in CAPITAL letters below.

Thanks,

Ted Coulson

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Wednesday, July 7, 2021 2:40 PM
To: Ted Coulson <coule@schweetlaw.com>
Cc: David Carpman <dcarpman@mhseattle.com>
Subject: MCC appeal - discovery

Hello Ted – I'm following up on discovery in this matter. As you are aware, we have a disagreement about the appropriate scope of subpoenas for documents, which you have tendered to the Examiner. The Examiner will rule on that, but meanwhile, if we can come to an agreement about a request for documents that are related to the remaining issues in the case and not unduly burdensome for my client to produce, I would be happy to work with you to do that. To that end, more specific information about what you are looking for and how it relates to the remaining live issues would be helpful. GIVEN THE WAY YOU HAVE CHOSEN TO PROCEED, CANCELLING OUR SCHEDULED DISCOVERY CONFERENCE AND REQUESTING A BRIEFING SCHEDULE INSTEAD, GIVES ME LITTLE REASON TO BELIEVE YOU ARE WILLING TO CHANGE YOUR POSITION. I BELIEVE THE SUBPOENAS ARE DIRECTED TO THE PRECISE ISSUES IN THE APPEAL AND REASONABLE IN SCOPE. SO, UNFORTUNATELY, WE WILL WAIT FOR THE HEARING EXAMINER TO GUIDE US ON THAT. IF YOU ARE WILLING TO CHANGE YOUR POSITION, THEN PLEASE LET ME KNOW.

With regard to depositions, at this time I do not believe that the depositions of Bob Desautel or Walter Kuhr are necessary. The individual owners' use of the homes is not relevant to this permit appeal. With regard to views and any other potential impact to adjacent properties, Bob and Walter are commercial fishermen, not architects or lawyers, and they rely on their professional consultants (and attorneys) to address these issues. I DISAGREE. AT THE VERY LEAST, MR. DESAUTEL AND MR. KUHR HAVE KNOWLEDGE CONCERNING THE VERACITY OF REPRESENTATIONS MADE BY OCEANSTAR'S REPRESENTATIVES AT THE PUBLIC MEETINGS FOR THE PROJECT, KNOWLEDGE RELATING TO THE ALLEGATIONS IN MCC'S APPEAL, KNOWLEDGE AND ACTIONS RELATED TO THE VARIOUS RESTRICTIONS ON THE PROPERTY, AND THE DESIGN, USE AND POSSIBLE DISPOSITION OF THE BUILDINGS.

Two of those consultants - Eric Drivdahl and Tom Brown - are holding dates for depositions. I WAS ACTUALLY SURPRISED BY YOUR CONTACT WITH MR. DRIVDAHL AND MR. BROWN. I HAVE A CALL INTO BOTH OF THEM TO HANDLE THE SCHEDULING OF THEIR DEPOSITIONS, PLEASE DO NOT INTERFERE. However, before we agree to these, we need to reach agreement on the scope of the questions. Under the Examiner rules these need to be relevant to pending appeal issues and reasonable in scope. Can you please identify the topics you expect to cover with them? THE TOPICS OF THE QUESTIONS WILL RELATE TO THEIR BACKGROUND, THEIR WORK ON THE PROJECT, AND THE BASES AND DECISIONS

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Courtney

Courtney Kaylor

Partner

McCULLOUGH HILL LEARY, PS

701 Fifth Avenue, Suite 6600

Seattle, Washington 98104

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EXHIBIT H

David Carpman

From: Ted Coulson <coule@schweetlaw.com>
Sent: Sunday, July 11, 2021 6:26 PM
To: Courtney Kaylor
Cc: David Carpman; Jacquie Quarre; Margaret Boyle
Subject: RE: MCC appeal - discovery

Hi Courtney, thanks for the email, your last email indicated I would not hear from you for a while.

Thanks for the information about Eric Drivdahl and Tom Brown; of course, that is news to me. Unless for the sake of cooperation you wish to tell me earlier what expert opinions these witnesses are being called for, I will wait to see your witness disclosures and decide if I want to depose them as an expert. Regardless, I do want to depose them as the fact witnesses that they are, especially considering your comments about Mr. Desautel and Mr. Kuhr only being commercial fishermen, so unless you represent them, your needs regarding scope and demanding payment to them as a condition to taking their fact depositions are not well founded.

I will consider your comments about in person depositions. I have the feeling the only reason you are insisting on remote depositions is to make the discovery process as difficult and expensive as possible for the appellants, which could easily be dispelled by your telling me that you are not doing any in person activities and if so, why.

Thanks, please let me know if you have any questions at this point.

Ted Coulson
206-953-2579

From: Courtney Kaylor <courtney@mhseattle.com>
Sent: Saturday, July 10, 2021 8:32 AM
To: Ted Coulson <coule@schweetlaw.com>
Cc: David Carpman <dcarpman@mhseattle.com>; Jacquie Quarre <jquarre@mhseattle.com>
Subject: RE: MCC appeal - discovery

Hello Ted – With regard to Mr. Drivdahl and Mr. Brown, they are my expert witnesses. While the parties have not yet exchanged witness lists, they will appear on my list when it is filed. They were engaged for the permitting process and also any resulting appeals, including this one. I ask that you contact me regarding their depositions and stop contacting them directly. In order to reach agreement regarding their depositions:

- With regard to scope, I need a more specific description of the topics you plan to cover, since it is evident from our past communications that we have a disagreement about the scope of the “issues in this appeal.”
- They need to be compensated, since they are expert witnesses in this matter and engaged for that purpose. We cannot agree to a deposition unless MCC agrees to pay their costs.

- I will be defending their depositions and will not agree to have these in person. My appeals practice remains remote. The Examiner's office is conducting remote hearings until at least September. I do not believe that, given COVID, the Examiner would compel anyone to meet in person.
- I will let them know you do not want to conduct the depositions on the dates they are holding. If we reach agreement on the depositions, we can schedule other dates.

We continue to have a disagreement regarding the depositions of Mr. Desautel and Mr. Kuhr.

If we cannot reach agreement, you will need to bring a motion for a subpoena under Hearing Examiner rule 3.12, which we will oppose.

Courtney

Courtney Kaylor

Partner

MCCULLOUGH HILL LEARY, PS

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