

**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 APPELLANT
MCC'S MOTION TO
CONTINUE HEARING**

1. Motion. Magnolia Community Council and Others requested a 60-day hearing continuance. Applicant Oceanstar, LLC opposed continuance. The other parties did not take a position.

2. Background. MCC appealed a Seattle Department of Construction and Inspections decision for two residences on May 6. The case was consolidated with the Friends of the Last 6,000 appeal filed the same day. A prehearing conference was held on May 18. With party consensus, five days were reserved for hearing (August 19, 23, and 25, and September 7 and 8).¹ As the Prehearing Order provided, on June 3, Oceanstar moved to dismiss. While the motion was pending, MCC requested document subpoenas. As the dismissal motion had the potential to narrow discovery scope, the Examiner stayed the subpoena request until the motion was ruled on.² On June 28, the appeal was narrowed.³

MCC renewed its subpoena requests. The Applicant moved to quash, and the Examiner entered a July 19 order finding the subpoenas went beyond appeal scope but could be revised.⁴ The parties agreed on scope, and the Office issued the subpoenas on August 10, with an agreed-on August 16 deadline.

The Hearing Examiner may continue a hearing “for good cause.”⁵ Had the SEPA issues not been stricken for lack of jurisdiction, the standard procedure is for the appeal to be decided within 90-days of appeal filing, or August 6. Absent party agreement, only a single

¹ Prehearing Order (May 19, 2021).

² Order on Motions for Subpoena Duces Tecum (June 22, 2021).

³ Order on Applicant’s Motion to Dismiss (June 28, 2021), dismissing Issue 3a and clarifying Issue 3b and 3c scope.

⁴ Order on Applicant’s Motion to Quash (July 19, 2021).

⁵ HER 2.20(a).

30-day extension is allowed.⁶ With this standard, MCC's continuance request delaying the hearing until October or later could not be accommodated:

30 days following document production to review documents, schedule and take depositions and ... to allow 30 days after completion of the last deposition to receive and review transcripts and prepare for hearing.⁷

With the SEPA dismissal and Council waiver during the pandemic, this code provision does not apply, but the Examiner is cognizant of the code's efficiency directive. The MCC appeal is not factually or legally complex, with view and stair use impacts from the two residences being the core concerns. Once the Order on the Motion to Dismiss was issued June 28, though discovery scope was disputed, the issues before the Examiner were clear. There is good cause for only modest scheduling adjustments.

To allow MCC additional preparation time the August 19 hearing date will be stricken, and Friends of the Last 6000 appeal may proceed first, going forward on August 23, with August 25 reserved if a second hearing day on this appeal is needed. The MCC appeal could then commence on September 7, with September 8 reserved. Staggering the two appeals allows MCC added preparation time while keeping delay to a minimum.

With the narrowed issues (on both appeals), four hearing days should be sufficient. Given the number of witnesses MCC has listed, the parties are directed to keep witness testimony on only the issues before the Examiner and avoid repetitive testimony. The added preparation time will assist with maintaining a tighter focus. As a precaution, the parties should coordinate with the Examiner's Office to reserve an extra day in September.

ORDER

MCC's motion for continuance is **DENIED** in part and **GRANTED** in part. The August 19 hearing date is stricken. August 23 and 25 are reserved for the Friends of the Last 6000 appeal. The MCC appeal will proceed on September 7 and 8. The parties are directed to coordinate with the clerk to schedule one additional reserve hearing day in September.

Entered August 10, 2021.

/s/Susan Drummond
Susan Drummond, Deputy Hearing Examiner

⁶ SMC 25.05.680(A)(3). The limit applies unless a Council land use decision is required.

⁷ MCC Reply (August 9, 2021), p. 6.

**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 Continue** 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.

Party	Method of Service
Appellant (MUP-21-016) Edward R. Coulson Magnolia Community Council and Others 206-953-2579 coule@schweetlaw.com Appellant (MUP-21-017) 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
Appellant Legal Counsel (MUP-21-017) 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
Applicant 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>Applicant Legal Counsel 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>Department 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>Mailing 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: August 10, 2021

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