

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

Hearing Examiner File:
W-21-007

TreePAC Environmental Impact Review
(TEIR) and Greenwood Exceptional
Trees (GET) of the November 15, 2021
Determination of Non-Significance by
Brennon Staley, Office of Planning and
Community Development (OPCD).

APPELLANTS' MOTION FOR
EXTENTION OF TIME FOR
DISCOVERY INCLUDING CORE
DOCUMENTS, INTERROGATORY,
AND SUBPOENA

I. Relief requested

Department documents due January 7, 2022 have not been received and discovery is necessary. Pursuant to Hearing Examiner Rule (HER) 2.16, the Appellant representative pro-se to W-21-007, Richard Ellison, moves to request an extension of the deadline for listing and serving witnesses and exhibits to February 10, 2022 (18 calendar days before the scheduled hearing date). The scheduled date for filing exhibits to the Examiner by February 17th and the scheduled appeal hearing to start on February 28th does not need to change. A pre-hearing conference may be advised to resolve intermediate deadlines. The duration of the exhibit and witness extension includes adequate time for discovery and motioning for subpoenas prepared by the Hearing Examiner for service by the appellant. It is understood that discovery is allowed with Hearing Examiner Rule (HER) 3.11 and will result in witnesses and exhibits to support the burden of proof necessary in this

1 appeal.¹ Likewise, subpoenas allowed with HER 3.12² will result in witnesses and
2 exhibits of evidence to be included within the appellant list. The duration considers that
3 the appellants have not been served the Department's Core Exhibits with a list, and is
4 now past due; and the duration includes the holiday of January 17, 2022; and it an
5 appropriate duration for the Department to adequately respond to the interrogatories and
6 subpoenas directed toward the relative City staff.
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8 The summary of timeline recommended for the Examiner's consideration include:
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- 10 1) TEIR to receive served Department Core Exhibits from OPCD with list by
11 January 10th;
- 12 2) TEIR serves the City 15 to 20 interrogatories by January 11th;
- 13 3) TEIR motions for subpoenas prior to the January 14th deadline by January 12th;
- 14 4) Martin Luther King. Jr. holiday on January 17th;
- 15 5) City's optional response to the TEIR motions by January 18th;
- 16 6) Examiner's orders on the motions by January 25th;
- 17 7) TEIR's service of the Examiner's-prepared subpoenas including document
18 requests by January 27th;
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22 ¹ "Appropriate prehearing discovery, including written interrogatories, and deposition upon oral and written
23 examination, is permitted. In response to a motion, or on the Hearing Examiner's own initiative, the Examiner may
24 compel discovery, or may prohibit or limit discovery where the Examiner determines it to be unduly burdensome,
25 harassing, or unnecessary under the circumstances of the appeal."

26 ² "(a) A motion may be made in writing for a subpoena to require a person to appear and testify at a deposition
27 or hearing, or for a person to produce specified documents or other physical exhibits at a prehearing conference,
28 deposition, or at hearing. (b) A motion for a subpoena for a person shall include the person's name and address, show
the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena sought. A
request for a subpoena for documents or other physical exhibits shall include the name and address of the person who
is to produce the documents or other physical exhibit, specify the materials to be produced, indicate the relevance of
the materials subpoenaed to the issues on appeal, and demonstrate the reasonableness of the scope of the subpoena
sought."

- 1 8) City's written responses to interrogatories and subpoenas by February 3rd,
2 including the City's witness and exhibit lists;
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4 9) TEIR's list of exhibits and witnesses (with service to parties) by February 10th,
5 including rebuttal witness and exhibit list; and
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7 10) Per original order, all parties file with the Office of Hearing Examiner an
8 electronic copy and a hard copy of the exhibits by February 17, 2022. If desired,
9 the City's rebuttal exhibits and witnesses may also be issued by that day.
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11 11) No other extensions required to the hearing schedule based on the above.

11 **II. Relevant Facts**

12 Per the Examiner's order of December 21, 2021, the City was to file and serve the
13 Department's Core Exhibits by identifying core documents by January 7, 2022. This list
14 was not served via email or by mail. This is not the entire record relied on in reaching the
15 decision. In addition, the listed exhibits shall be served on the parties by the January 7th
16 deadline. The appellants have not been served the documents as of the day and time of
17 this motion.
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19 This motion does not change the filing with the Office of Hearing Examiner an electronic
20 copy and a hard copy of the exhibits by February 17, 2022.
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22 **III. Argument**

23 The City has failed to meet the deadline for response to core documents and they should
24 have alerted the Hearing Examiner and Appellant immediately as to when the documents
25 would be provided. The appellant offers herein an adequate timeline for the Department's
26 Responses to the Interrogatories and Request for Production. Without the relevant
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1 evidence being produced on relative to the Department's adequate assessment to the
2 determination of no significance in increased density of low-rise multifamily zones, the
3 Appellant will be denied a fair opportunity to reply to the Motion for Dismissal,
4 especially if that motion is for Summary Judgement. Per HER 3.13, each party in an
5 appeal proceeding has the right to presentation of evidence and other rights determined
6 by the Hearing Examiner as necessary for the full disclosure of facts and a fair hearing.
7 For the reasons given above, the Appellant requests that the deadline for filing a exhibits
8 and witnesses the City to February 10, 2022. The Hearing Examiner may provide an
9 order to the Department to produce all of the relevant discovery documents.
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12 Dated this 10th day of January, 2022.

13 Respectfully submitted,
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17 Richard Ellison, appellant pro se
18 Authorized Representative
19 TreePAC Environmental Impact Review
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Certificate of Service

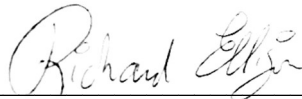
I certify that on this date, I electronically filed a copy of the foregoing document **The Appellants' Motion for Extension of Time for Discovery including Core Documents, Interrogatory, and Subpoena** with the Seattle Hearing Examiner using its e-filing system in the matter of the Determination of Non-Significance issued by the Director, Office of Planning and Community Development, Hearing Examiner File No. W-21-007. I also certify that on this date, a copy of the same document was sent via email to the following parties:

Department:
Geoffrey Wentlandt
Office of Planning and Community Development
Email: geoffrey.wentlandt@seattle.gov

Department Legal Counsel:
Daniel Mitchell
Seattle City Attorney's Office
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Ivy Durslag,
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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct to the best of my knowledge and belief.
Signed this 10th day of January 2022 in Seattle, Washington.



Richard Ellison, appellant rep pro se