

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 TO COMPEL
RESPONSE TO DISCOVERY AND
CLARIFICATION TO REMAINING
SUBPOENA

I. BACKGROUND

On January 14, 2022, pursuant to Hearing Examiner Rules HER 3.12 Subpoenas, the Appellants respectfully requested to subpoena persons associated with the Office of Planning and Community Development via Interrogatory No. 1. The objective is to seek their testimony relative to City Core Document exhibits received and documents pending Interrogatories 2 to 10. On January 25, 2022, the Deputy Hearing Examiner ruled in favor of the City's opposition to calling the Director of the Office of Planning and Community Development. The Appellants accept that decision. Clarity is requested, however, relative to the remaining portion of the January 14th motion that also requested the right to subpoena those persons identified within the forthcoming response to Interrogatory No. 1 relative to dates provided in the Second Pre-Hearing Order on January 18th ¹.

II. RELIEF REQUESTED

¹ Second pre-hearing order established the Discovery Deadlines.

- Appellants' Interrogatories January 14, 2022
- Appellants' Subpoena Motions January 14, 2022
- Department's Subpoena Motions Response January 21, 2022
- Examiner Decision on Subpoena Motions January 25, 2022
- Appellants' Hearing Subpoenas January 27, 2022

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2 Appellants TreePAC Environmental Impact Review (TEIR) and Greenwood Exceptional
3 Trees (GET) ask for clarification pursuant to Hearing Examiner Rules of Practice and
4 Procedure 3.20(a)(1), asking the Examiner to reconsider and clarify if the remaining prior
5 requested subpoenas (beyond the Department Director) are indeed still eligible to be
6 called to testify. Since the interrogatory requested that the persons listed by the
7 Department's response also include in what manner each was involved with the proposed
8 city-wide action, there should be no Department objection to having the appellants call
9 for their testimony by direct examination of the appellant.

10 The timing of the City's responses to the interrogatories are critical to allowing
11 subpoenas to be prepared by the Hearing Examiner and served by an independent person
12 not a party to the appeal. We understand that the Examiner has ordered that the
13 Department is to provide written responses to interrogatories by February 3rd. Given the
14 hearing date set for February 28th, the Examiner should compel the responses to the
15 Interrogatory No. 1 no later than January 31, 2022 so that subpoenas will be timely and a
16 fair presentation of the issues may be heard.

17 **III. AUTHORITY**

18 RCW 12.04.050 established the process notice (such as a subpoena to appear at a
19 hearing) that subpoena must be issued by district court judges of the State and a summons
20 or notice may be served by any citizen of the state of Washington over the age of
21 eighteen years and not a party to the action. RCW 12.04.040 indicates that a notice shall
22 be served at least five days before the time mentioned in the notice for the defendant to
23 appear, by delivering to the defendant, or leaving at his or her place of abode, with some
24 person over twelve years of age, a true copy of the complaint and notice. RCW
25 12.04.010 indicates that "Civil actions in the several justices' courts of this state may be
26 instituted either by the voluntary appearance and agreement of the parties, by the service
27 of a summons, or by the service upon the defendant of a true copy of the complaint and
28

1 notice, which notice shall be attached to the copy of the complaint and cite the defendant
2 to be and appear before the justice at the time and place therein specified, which shall *not*
3 *be less than six nor more than twenty days* from the date of filing the complaint.
4

5 IV. ARGUMENT

6 HER 3.20 (a)(1) allows for a motion for reconsideration to correct such an unfair result.
7 TEIR and GET requests the Hearing Examiner's January 25, 2022 decision on the
8 Appellant's motion for Subpoenas be clarified to allow the timely and complete
9 disclosure of responses and documents in order for the Hearing Examiner to consider
10 and, where agreed, prepare the subpoena for an independent party to serve via certified
11 mail or, where allowed during a pandemic, served in person. With the first hearing date
12 on February 28, the subpoena timing may be satisfactory relative to RCW sections cited
13 herein. However, with the appellants' list of witnesses and exhibits due by February 10 ,
14 the Department release of discover as late as February 3 is not logistically feasible for the
15 timely preparation and service to subpoenaed individuals.

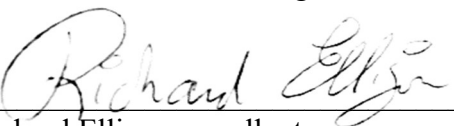
- 16 • February 3 or 4 – OPCD releases complete responses to Interrogatories.
17 (Reference the bullet below that this date should be changed to be not later than
18 January 31, 2022.)
- 19 • February 6 – Appellants provide to the Hearing Examiner the names and locations
20 of service and the purpose of the subpoena. Also, any documents that the
21 individual may have as referenced in the interrogatory may be included within the
22 subpoena request. City waives intervention given names and documents
23 referenced are in response to Discovery (less the OPCD Director per the
24 Examiner's ruling).
- 25 • February 9 – Hearing Examiner completes the authorized subpoenas for
26 Appellants to pick up from the Municipal Tower.
- 27 • February 10 – Appellants include names of those being served subpoenas within
28 the Appellants' list of witnesses.

- February 10 and 11 – a person independent to the parties of the appeal to certify mail and/or serve the subpoenas. This would be 17 to 18 days before the appearance in the hearing.
- February 17 – certified receipt of subpoenas e-filed by the Appellant to the Office of the Hearing Examiner.
- February 22 – documents received from those subpoenaed and received within 7 days of service of the subpoena would be e-filed to the Hearing Examiner and emailed to the Parties. (February 21 is President’s Day).
- Since the above date is only six days before the hearing, and the Examiner has requested that all hardcopies and electronic documents be served by February 17, the complete responses to interrogatories should be moved from February 3 to no later than January 31st.

V. CONCLUSION

The Department has been ordered to reply to that interrogatory by February 4, 2022. Given timing for remaining subpoenas that are to be prepared by the Hearing Examiner prepared and served by an independent party, the Examiner should compel the discovery response no later than January 31, 2022 and allow just those subpoena-generated exhibits that might result to be e-filed and served to the Examiner and all parties no later than February 17, 2022.

Signed this 26th day of January 2022 in Seattle, Washington.


Richard Ellison, appellant rep pro se

Certificate of Service

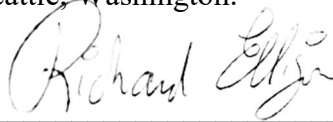
I, Richard Ellison, certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies, via e-mail, of the **APPELLANTS' MOTION TO COMPEL AND CLARIFICATION TO REMAINING SUBPOENA** to the person listed below, in the matter of the Determination of 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
Email: daniel.mitchell@seattle.gov

Co-Appellant:
Ivy Durslag
Greenwood Exceptional Trees
512 N. 82nd Street Seattle, WA 98103
Email: ivyhaley@msn.com

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 26th day of January 2022 in Seattle, Washington.



Richard Ellison, appellant rep pro se