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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of
THE WESTLAKE STAKEHOLDERS GROUP
IN RE SEATTLE DEPARTMENT OF TRANSPORTATION, SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS), SEATTLE BICYCLE MASTER PLAN

Hearing Examiner File No. W-13-009
MOTION TO CONTINUE HEARING DATE AND REQUEST FOR CONSIDERATION ON SHORTENED TIME

I. INTRODUCTION

The Westlake Stakeholders Group (“Appellants”) respectfully request the Hearing Examiner continue the hearing date in this matter to a date in May, 2014 in order to provide time to properly prepare this case for hearing and because Appellants’ counsel has a number of other matters set for trial or hearing between now and the currently proposed March 15, 2014 hearing date in this case. Appellants also respectfully request that this motion be considered on shortened time on or before the prehearing conference presently scheduled for 10:00 AM on Wednesday, January 15, 2014.

II. ARGUMENT AND AUTHORITY

A. More Time is Needed to Conduct Discovery Required to Properly Prepare this Case for Hearing; No One Will Be Prejudice by a Continuance

The trial court may change a trial date because it has the authority to manage its own calendar, *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 168-69 (1998), and whether to

1 grant or deny a motion for continuance is within the court’s discretion. *Balandzich v. Demeroto*,
2 10 Wn.App. 718, 720 (1974). Washington courts have long recognized that justice should be the
3 “primary consideration in the trial court’s decision on the motion for a continuance.” *Butler v.*
4 *Joy*, 116 Wn.App. 291, 299 (2003) (quoting *Coggle v. Snow*, 56 Wn.App. 499, 508 (1990)).
5 When deciding whether to grant a continuance, the Court may properly consider: (1) the
6 necessity of a reasonably prompt disposition of the litigation; (2) the needs of the moving party;
7 (3) the possible prejudice to the adverse party; (4) the prior history of the litigation, including
8 prior continuances granted the moving party; (5) any conditions imposed in the continuances
9 previously granted; and (6) any other matters that have a material bearing upon the exercise of
10 the case. *See Balandzich*, 10 Wn.App. at 720.

11 There is no need to rush to hearing since the City has a fully functioning bicycle Master
12 Plan that is just six (6) years old. The 2013 Update to the Master Plan (the “Plan”), which is at
13 issue here, is a programmatic *update* to the existing 2007 Bicycle Master Plan. This is a not a
14 project-action appeal where there is a deadline to complete the proposal. Instead, the Plan is a
15 20-year vision document that includes nearly one-half billion dollars in proposed, envisioned or
16 desired bicycle infrastructure improvements, much of which is not presently funded.¹ The Plan
17 is adding to and updating the City’s current Bicycle Master Plan. As such, there is no need to
18 artificially force a “prompt disposition of the litigation.” *Balandzich, supra* (element 1).

19 By contrast, the Appellants need more time to properly prepare for hearing because of the
20 size the Plan and the complexity of the issues in this case. The Plan is a 93-page document that
21 encompasses and impacts the *entire* City of Seattle. The Plan includes hundreds of projects of
22 varying kinds, including: neighborhood greenways; shared street facilities; bicycle lanes;
23 climbing lanes; on-street, off-street, one-way and two-way cycle tracks; buffered bike lanes; and
24 multi-user trails. The Plan proposes a bicycle facility network that includes approximately 584.7
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¹ <http://www.seattle.gov/transportation/docs/bmp/nov13/Executive%20Summary.pdf>

1 miles of infrastructure throughout the entire City. SDOT conducted a number of public outreach
2 meetings, gathered comments and worked with numerous consultants in the research, drafting
3 and completion of the proposed Plan. Obtaining and digesting all of this will take weeks if not a
4 month or more. Under the current schedule, Appellants have approximately seven (7) weeks to
5 do so. Even if the Appellants could timely obtain information from SDOT, which, based on past
6 experience, is unlikely, seven (7) weeks is simply not enough time to gather and digest the
7 mountain of information related to the Plan. Similarly, some of the people involved in the Plan's
8 preparation and the SEPA DNS at issue here are no longer with the City, including SDOT's
9 former Director Peter Hahn, who signed the DNS. The Appellants must be given the time and
10 opportunity to obtain all of these documents, to review them, to interview or depose witnesses
11 for hearing, and otherwise properly prepare for hearing. While SDOT will not be prejudiced by
12 a short continuance, rushing the Appellants to hearing will severely prejudice them, giving rise to
13 an issue on appeal. *Balandzich, supra* (elements 2 and 3).

14 To date, neither party has requested a continuance. On balance, a two-month
15 continuance to provide time for discovery and to properly prepare for trial is necessary and
16 warranted. *Butler, supra* (Justice should be the "primary consideration in the trial court's
17 decision on the motion for a continuance.")

18 **B. A Continuance is Warranted Because Appellants' Counsel is Consumed with a Trial**
19 **and Hearing Until March 15th, 2014**

20 Appellants need more time because their lead trial lawyer is set for a trial on February 10,
21 2014 and an administrative hearing in another matter on March 15th, 2014. The undersigned
22 counsel is currently set for trial in King County Superior Court, Cause No. 12-2-21829-3SEA
23 beginning on February 10, 2014. A copy of the Case Schedule Order in that matter is attached as
24 Exhibit 1 to the Declaration of Joshua C. Allen Brower in Support of Motion to Continue
25 ("Brower Decl."). That case involves a complex corporate matter spanning over three decades
and will likely take 5-7 days to try. *See* Brower Decl. at paragraph 4. It is taking a substantial

1 amount of time to prepare that case for trial. *Id.* Additionally, the undersigned counsel is set for
2 a one-day hearing before the Snohomish County Hearing Examiner on March 15th. *Id.* at
3 paragraph 5. That case has been ongoing for over two years and involves complex land use and
4 wetland issues, which again will require substantial time to properly prepare. Appellants will be
5 prejudiced if they are rushed to hearing. Again, a short continuance is warranted. *Balandzich,*
6 *supra* (elements 2 and 3).

7 III. CONCLUSION

8 For the reasons articulated above, Appellants respectfully request the hearing in this
9 matter be rescheduled to a date in May 2014.

10 DATED this 9th day of January, 2014.

11
12 VERIS LAW GROUP PLLC

13 By /s/ Joshua C. Allen Brower
14 Joshua C. Allen Brower WSBA No. 25092
15 Danielle N. Granatt, WSBA No. 44182
16 Attorneys for Appellants
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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document to be served on the following persons via the methods indicated:

Jeff Weber
Seattle City Attorney's Office
PO Box 94769
Seattle, WA 98124-4769
206.727.3999 (t)
Jeff.weber@seattle.gov

- Overnight Delivery via Fed Ex
- First Class Mail via USPS
- Hand-Delivered via ABC Legal Messenger
- Facsimile
- E-mail

Dated at Seattle, Washington, this 10th day of January, 2014.

s/ Alison Sepavich
Alison Sepavich

4831-4501-9927, v. 1