

Sisson, Jody

From: Fred Schmidt <schmidt@ekwlaw.com>
Sent: Friday, July 18, 2014 9:29 AM
To: Examiner, Hearing
Subject: FW: Neighbors Encouraging Responsible Development. File Nos. MUP-14-006(DR,W) and S-14-001: Urgent Request for Telephone Conference Among Parties

Importance: High

I am forwarding the email below, per our office call just now.

Fred



Fred Schmidt
Paralegal
Eglick Kiker Whited
1000 Second Avenue, Suite 3130
Seattle, WA 98104
206.441.1069

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From: Peter Eglick
Sent: Friday, July 18, 2014 9:04 AM
To: Tanner, Sue
Cc: Vee, Linda; Rich Hill (Rich@mhseattle.com); Papers, Garry; Mills, William; Fred Schmidt
Subject: RE: Neighbors Encouraging Responsible Development. File Nos. MUP-14-006(DR,W) and S-14-001: Urgent Request for Telephone Conference Among Parties
Importance: High

Dear Hearing Examiner Tanner:

The Appeal and Request for Interpretation in this matter were filed on May 29, 2014. DPD insisted at the prehearing conference in June that it needed until July 11 to issue its Interpretation on the issues raised in the request. The import was that DPD needed the time to do a careful analysis and render a valid Interpretation decision.

The building's size has been an issue for over a year, with DPD's Mr. Papers repeatedly lecturing my clients, when they have objected to the structure's size, that it complies with Land Use Code limits. As recently as the prehearing conference, I raised the FAR concern again with Respondents' representatives and asked that they carefully address this issue before time and money were needlessly spent on appeal of a Director's Decision based on a Code noncompliant project.

On July 11, 2014, the last day possible under the Prehearing Order (and two months after the Director's MUP Decision, presumably based on careful review, was issued), DPD's Mr. Mills issued an Interpretation finding the project compliant in all respects. Within minutes of receipt of that decision I was in consultation with my clients, my partners, and potential experts. We spent hours puzzling over

the Code and the Interpretation's analysis and conclusions on FAR, trying to understand it in the context of the project plans. We reviewed discovery documents we had earlier obtained from the Respondents, but had held until we saw how the Interpretation went. Further, we noted Mr. Mills deposition for Tuesday, July 22 and undertook the time-consuming process of preparing questions and exhibits for his examination. As late as yesterday, my office spent between a significant portion of the day in such work.

As it turns out we should not have bothered. I have in my Outlook Inbox this morning an e mail sent by DPD's Mr. Mills yesterday after business hours at 5:32 pm. Your office apparently received the e mail at the same time. Mr. Mills after hours e mail rewrites the Interpretation issued on July 11, and now acknowledges that the project is indeed noncompliant with the Code FAR limit (although not by as much as it actually is). Had Mr. Mills given advance notice (an e mail, a telephone head's up) that the Interpretation's conclusion on FAR was in the process of being reconsidered, the appellant would have been spared significant expense and time. (I do this work for a living, but some client participants have taken time off from their employment to assist in puzzling through the Interpretation's FAR analysis). DPD's failure to provide such advance notice is inexcusable.

This background leads to the purpose of this e mail. In light of these events and to ensure that Appellant's time and treasury is not further, needlessly drained, Appellant request on an urgent basis a telephone conference to amend the Prehearing Order. We intend to propose that the remaining deadlines and dates be suspended and that a new schedule not be adopted until/if/when it is clear how DPD and the applicant will proceed in light of the new Interpretation. Further, if they ultimately determine to proceed based on the current Director's Decision we intend to ask that the Examiner rule that the first order of business before anything else is scheduled will be a discovery and dispositive motion practice to address obvious threshold issues.

I am in a mandatory federal court discovery conference among counsel this morning that is likely to last until noon and then must be out of the office for the rest of the day as of 1 pm. I am available virtually any time on Monday for a conference call on this matter.

Respectfully,

Peter Eglick
Attorney for NERD

Peter J. Eglick
Eglick Kiker Whited PLLC
EKWLAW.COM
Phone: 206-441-1069
Address: Suite 3130, 1000 Second Avenue, Seattle, WA 98104

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From: Vee, Linda [<mailto:Linda.Vee@seattle.gov>]
Sent: Tuesday, June 17, 2014 3:45 PM
To: Peter Eglick; Rich Hill (Rich@mhseattle.com); Papers, Garry; Mills, William
Cc: laura@mhseattle.com
Subject: FW: Neighbors Encouraging Responsible Development. File Nos. MUP-14-006(DR,W) and S-14-001

My apologies for the many emails. Attached is the correct prehearing order.

Thank you.

From: Vee, Linda
Sent: Tuesday, June 17, 2014 3:25 PM

To: Peter Eglick (eglick@ekwlaw.com); Papers, Garry; Mills, William; Rich Hill (Rich@mhseattle.com)
Cc: laura@mhseattle.com
Subject: Neighbors Encouraging Responsible Development. File Nos. MUP-14-006(DR,W) and S-14-001

Good afternoon,

Attached is the prehearing order, order consolidating hearing, and the mediation program flyer.

Thank you.

Linda

Linda Vee LEGAL ASSISTANT
Office of Hearing Examiner
(Phone) 206.615.1718 | (fax) 206.684.0536
<http://seattle.gov/examiner/>

P. O. Box 94729
Seattle, WA 98124-4729