

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**AQUARIAN FOUNDATION, INC.,**

from a decision by the Director, Seattle  
Department of Construction and Inspections

Hearing Examiner Files:  
**MUP-23-011**

Department Reference  
3038146-LU

**ORDER ON APPELLANTS'  
REQUEST FOR SUBPOENAS**

Appellant Aquarian Foundation, Inc. requested that six individuals be required to testify at the hearing scheduled for February 6 and 7, 2024. The Seattle Department of Construction and Inspections (“Department”) and Applicant O’Hare have not responded, so the Order forecloses no motions to quash, if submitted within five days of the request.<sup>1</sup> The six individuals are:

David Sachs – SDCI  
Natalie Quick – Consultant for Applicant  
Austin Besse – Weber Thompson  
Jodi Patterson O’Hare – Applicant  
Paul Humphries – SDCI  
Joe Reilly – East Design Review Board

If issuance criteria are met, the Hearing Examiner Rules of Practice and Procedure allow subpoena requests for witness testimony. Absent Examiner approval, the subpoena must be served “no later than ten business days” before the ordered appearance, with the Office of Hearing Examiner provided three business days for subpoena processing.<sup>2</sup> The party requesting the subpoena must serve the subpoena and file a declaration documenting mailed or personal service. These time frames were not complied with. The subpoenas request was made ten business days before the hearing, so the Office was not afforded three business days for processing. Even if issued on the day requested, only personal service would suffice, as mailed service would not provide ten business days’ advance notice. In addition to timeliness, other concerns are present. For all but one subpoena, these issues foreclose subpoena issuance.

David Sachs was identified as the Department planner assigned to the project, so presumably would have knowledge relevant to the project and issues raised in the appeal. Mr. Sachs attended the pre-hearing conference and has been expected to attend the hearing. It is reasonable to the parties and witness to waive the timeliness issue. A subpoena will issue requiring Mr. Sachs’ attendance.

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<sup>1</sup> HER 5.13.

<sup>2</sup> HER 5.13.

Natalie Quick (design consultant) and Austin Besse (an architect) are being called for expert testimony. They cannot be compelled to provide such expert testimony unless the party calling them has completed fee arrangements to cover their fees. While an appellant may call their own experts, they may not rely upon another party's paid experts to establish their case. There is no documentation that this has occurred. Given this lack of documentation, the timeliness issue should not be waived.

Applicant O'Hare has been asked to testify. An applicant can be expected to testify in a proceeding regarding their project. However, the individual identified as the applicant appears to be not the property owner or entity funding the project, but a design professional who compiled the application. As with the above witnesses, to the extent expert testimony as a design professional is intended to be elicited, this is only permissible if fee arrangements have been made. Aquarian has provided no documentation of that.

Any subpoena request must explain how the testimony sought is reasonable and "non-duplicative."<sup>3</sup> Aquarian identified the requested testimony from Ms. O'Hare as being on the witness's "knowledge of the facts of Approval of Master Use Permit and associated Design Review." This appears to be a depiction of the project's procedural and factual background. Such facts can be readily obtained through Mr. Sachs. The subpoena request does not explain how the anticipated testimony would avoid duplicating that of other witnesses. The timeliness issue will not be waived.

Paul Humphries, an arborist employed by the City of Seattle, has been requested "to testify concerning the preservation of trees and the tree canopies in Seattle." The request does not identify the role Mr. Humphries played in project review or how his testimony would relate to the project. If the testimony is expected to address the City's regulatory or policy objectives, it is the Examiner's role to review the regulatory structure and determine if there are any inconsistencies with it. Even with properly called witnesses, the Examiner limits testimony on witnesses purporting to explain what the law is, as this is legal argument, not evidence. The timeliness issue will not be waived.

Similar concerns apply to the request for testimony from Joe Reilly, who sits on the East Design Review Board. Further, it would be inappropriate to call a decision maker to explain a recommendation, which speaks for itself. The timeliness issue will not be waived to compel Mr. Reilly's attendance.

Aquarian may cross-examine any witness the Applicant or Department calls. Though more latitude may be provided than in a court setting, cross-examination must be within the scope of testimony given on direct examination.

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<sup>3</sup> HER 5.17.

**ORDER**

The request for subpoenas is **GRANTED** in part and **DENIED** in part. Any witness ordered to appear may do so either remotely (by ZOOM) or may appear in person, at their election. The party calling that witness is responsible for providing the witness with remote call-in instructions.

Entered January 24, 2024.

A handwritten signature in black ink, appearing to read 'SD', is written over a horizontal line.

Susan Drummond  
Deputy Hearing Examiner

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on the date below I sent true and correct copies of the attached **ORDER ON SUBPOENAS REQUEST** to each person below in **Aquarian Foundation, Inc.**, Hearing Examiner File **MUP-23-011** in the manner indicated.

Party	Method of Service
<b>Appellant and Authorized Representative</b>  Reverend Jann Werner Aquarian Foundation, Inc info@aquarianfoundation.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
<b>Applicant Legal Counsel</b> McCullough Hill PLLC  Jessica Clawson <a href="mailto:jessica@mhseattle.com">jessica@mhseattle.com</a>  David P. Carpman <a href="mailto:dcarpman@mhseattle.com">dcarpman@mhseattle.com</a>  Isaac A. Patterson <a href="mailto:ipatterson@mhseattle.com">ipatterson@mhseattle.com</a>	<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
<b>Department</b>  David Sachs SDCI david.sachs@seattle.gov	<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: January 24, 2024

/s/ Angela Oberhansly  
Angela Oberhansly  
Legal Assistant