1			
2 3	BEFORE THE HEARING EXAMINER CITY OF SEATTLE		
4	In the matter of the appeal of	Matter No. FOW 25-001	
5 6	NOEL POVLSEN and LYNN REED	APPELLANTS' MOTION TO EXCLUDE AND STRIKE	
7 8	from a decision by the Director, Seattle Department of Construction and Inspections		
9	I. RELIEF REQUESTED		
10 11	Appellants, through the undersigned counsel	of record, request that the Hearing	
11	Examiner (a) exclude the declaration of Maxwell Burke dated June 16, 2025, and all		
13	attachments thereto; and (b) strike Section III(A)(3) of the City's reply brief filed on June 16, 2025, in accordance with Hearing Examiner Rules 3.13 and 3.18.		
14	II. STATEMENT OF FACTS		
15 16	On June 16, 2015, the City filed a reply in support of its motion for summary		
10	judgment. That reply was accompanied by a declaration from Assistant City Attorney		
18	Maxwell Burke, who represents the City in this matter. Mr. Burke's declaration introduced		
19	portions of three Land Use Petition Act complaints filed by appellants' attorney. Section		
20	III(A)(3) of the City's reply brief filed on June 16, 2025, discusses the three complaint excerpts appended to Mr. Burke's declaration.		
21	exectpts appended to wir. Durke's declaration.		
22			
23			
24	APPELLANTS' MOTION TO EXCLUDE AND STRIKE - 1 Case No. FOW 25-001	R. SHAWN GRIGGS Attorney at Law 130 Nickerson street, suite 201 seattle, washington 98109 telephone (206) 745-3805 facsimile (206) 745-3806	

1	III. STATEMENT OF ISSUES	
2	1. Whether the declaration of Mr. Burke dated June 16, 2025, and the materials appended	
3	thereto should be excluded from the record because they are inadmissible under Hearing	
4	Examiner Rule 3.18.	
5	2. Whether Section III(A)(3) of the City's reply brief filed on June 16, 2025, which	
6	discusses the materials appended to Mr. Burke's declaration, should be stricken.	
7	IV. EVIDENCE RELIED UPON	
8	Pleadings and records herein.	
9	V. AUTHORITY AND ARGUMENT	
10	The declaration of Mr. Burke dated June 16, 2025, and the materials appended thereto	
11	should be excluded from the record, and section III(A)(3) of the City's reply brief filed on	
12	June 16, 2025, which relies exclusively on that evidence, should be stricken. Hearing	
13	Examiner Rule 3.18(a) conditions admission of evidence on its (1) relevance, (2) reliability,	
14	and (3) probative value. Rule 3.18(b) authorizes the exclusion of evidence that does not	
15	satisfy this standard. And Rule 3.13 provides that unless objected to, evidence submitted into	
16	the record is deemed admissible. Appellants object to admissibility of these materials because	
17	they are neither relevant nor probative, and request that they be excluded from the record in	
18	accordance with Rule 3.18.	
19	Mr. Burke's declaration introduced portions of three Land Use Petition Act complaints	
20	filed by appellants' attorney on behalf of third parties in cases other than this one. The City's	
21	reply argues that the position taken by appellants in this case is contrary to that taken by their	
22	attorney in those other cases. See City's Reply Brief, p. 8, li. 4—16. The complaints have no	
23	precedential value whatsoever. Nor do they introduce facts that are related to the subject	
24	APPELLANTS' MOTION TO EXCLUDE AND STRIKE - 2 Case No. FOW 25-001	

1	matter of this case. And since none of the parties to those cases are party to this case, there is	
2	no judicial estoppel or equivalent theory by which they might otherwise be relevant.	
3	Consequently, the materials are irrelevant and have no probative value. Appellants therefore	
4	object to their admissibility pursuant to Rule 3.13, and request that they be excluded in	
5	accordance with Rule 3.18 and that the City's argument made in reliance on these	
6	inadmissible materials likewise be stricken from the record.	
7	RESPECTFULLY SUBMITTED this 18th day of June, 2025.	
8		s/ R. Shawn Griggs
9		R. Shawn Griggs, WSBA #30710 Attorney for appellants Noel Povlsen and Lynn Reed
10		130 Nickerson Street, Suite 201 Seattle, Washington 98109
11		Telephone: (206) 745-3805 Facsimile: (206) 745-3806 E-mail: shawn@griggs-law.com
12		E man. <u>snawn(@griggs iaw.com</u>
13	CERTIFICATE OF SERVICE	
14	I hereby certify that on this 18th day of June, 2025 a true and correct copy of the foregoing was sent via e-mail to:	
15	Maxwell Burke Seattle City Attorney's Office	
16	701 Fifth Avenue, Suite 2050 Seattle, WA 98124-4769	
17	Phone: 206-684-7493 Fax: 206-684-8284	
18	Maxwell.Burke@seattle.gov s/ R. Shawn Griggs	
19	R. Shawn Griggs, WSBA No. 30710 130 Nickerson Street, Suite 201	-
20	Seattle, Washington 98109 P: (206) 745-3805	
21	F: (206) 745-3806 e-mail: <u>shawn@griggs-law.com</u>	
22		
23		
24	APPELLANTS' MOTION TO EXCLUDE AND STRIKE - 3 Case No. FOW 25-001	R. Shawn Griggs Attorney at Law 130 nickerson street, suite 201 seattle, washington 98109 telephone (206) 745-3805 facsimile (206) 745-3806