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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the matter of the appeal of

NOEL POVLSEN and LYNN REED

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

Matter No. FOW 25-001

APPELLANTS' MOTION TO  
EXCLUDE AND STRIKE

**I. RELIEF REQUESTED**

Appellants, through the undersigned counsel of record, request that the Hearing Examiner (a) exclude the declaration of Maxwell Burke dated June 16, 2025, and all 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.

**II. STATEMENT OF FACTS**

On June 16, 2015, the City filed a reply in support of its motion for summary judgment. That reply was accompanied by a declaration from Assistant City Attorney Maxwell Burke, who represents the City in this matter. Mr. Burke's declaration introduced portions of three Land Use Petition Act complaints filed by appellants' attorney. Section 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.

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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  
9 s/ R. Shawn Griggs  
10 R. Shawn Griggs, WSBA #30710  
11 Attorney for appellants Noel Povlsen and Lynn Reed  
12 130 Nickerson Street, Suite 201  
Seattle, Washington 98109  
Telephone: (206) 745-3805  
Facsimile: (206) 745-3806  
E-mail: [shawn@griggs-law.com](mailto:shawn@griggs-law.com)

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 18th day  
15 of June, 2025 a true and correct copy of  
16 the foregoing was sent via e-mail to:

17 Maxwell Burke  
18 Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98124-4769  
Phone: 206-684-7493  
Fax: 206-684-8284  
[Maxwell.Burke@seattle.gov](mailto:Maxwell.Burke@seattle.gov)

19 s/ R. Shawn Griggs  
20 R. Shawn Griggs, WSBA No. 30710  
21 130 Nickerson Street, Suite 201  
Seattle, Washington 98109  
P: (206) 745-3805  
F: (206) 745-3806  
e-mail: [shawn@griggs-law.com](mailto:shawn@griggs-law.com)

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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