

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

**FOSS MARITIME COMPANY AND
PORT OF SEATTLE**

from an interpretation issued by the Director,
Department of Planning and Development

Hearing Examiner File:

S-15-001

S-15-002

Department Reference:

3020324

**ORDER
CONSOLIDATING
HEARING**

Two appeals have been received by the Office of Hearing Examiner, regarding Department of Planning and Development's interpretation No. 15-001, for use of property at 2701 26th Avenue SW. (Hearing Examiner Files: S-15-001 and S-15-002).

Because the appeals concern the same decision and raise similar issues, they should be consolidated and considered at one hearing. It is therefore **ORDERED** that these appeals shall be heard at a consolidated hearing scheduled for **Thursday, July 23rd, 2015** **beginning at 9:00 a.m.**, in the Office of Hearing Examiner, Hearing Room 4000, 700 Fifth Avenue, (Seattle Municipal Tower, 40th Floor) Seattle, Washington.

Entered this 27th day of May, 2015.



Anne Watanabe, Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Telephone: (206) 684-0521
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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

**NOTICE OF APPEAL HEARING
Hearing Examiner Files: S-15-001 & S-15-002**

On **Thursday July 23, 2015** beginning at **9:00 a.m.**, the City Hearing Examiner will hold a public hearing at the Office of Hearing Examiner, Room 4000, 700 Fifth Avenue (Seattle Municipal Tower, 40th Floor), Seattle Washington, to consider the following matter:

The appeals of Foss Maritime Company and Port of Seattle from an interpretation issued by the Director, Department of Planning and Development for use of property at 2701 26th Avenue SW (Terminal 5).

The authority for the hearing and the jurisdiction of the Hearing Examiner are derived from Seattle Municipal Code 23.88, and the hearing will be conducted in accordance with procedures for hearing contested cases in Chapter 3.02 of the Seattle Municipal Code and the Hearing Examiner Rules. The hearing is open to the public, but only persons qualifying as parties or called by the parties as witnesses will have the opportunity to testify.

Consistent with applicable rules, the parties will each have an opportunity at the hearing to offer testimony and to present witnesses and other evidence that they believe supports their view. To be admitted, evidence must be relevant, come from a reliable source, and have some value toward proving the point of the party who offers it. If a party intends to refer to any exhibits (documents, photographs, etc.) at the hearing, the party must bring copies of the exhibits for the other parties and for the Hearing Examiner.

DATE OF NOTICE: May 27, 2015

Office of Hearing Examiner
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City of Seattle

Office of Hearing Examiner

Sue A. Tanner, Hearing Examiner

Anne Watanabe, Deputy Hearing examiner

May 27, 2015

**IMPORTANT
APPEAL INFORMATION**

The Department of Planning and Development decision regarding Interpretation Number: 15-001, 2701 26th Avenue SW, has been appealed by Foss Maritime Company and Port of Seattle. An appeal hearing on this matter (Hearing Examiner Files: S-15-001 and S-15-002) is scheduled for **THURSDAY JULY 23, 2015 AT 9:00 AM**, in the Hearing Room of the Office of Hearing Examiner, Seattle Municipal Tower, 700 5th Avenue, Suite 4000, Seattle, Washington. This hearing is open to the public, but only the parties to the appeal and persons called as witnesses will have an opportunity to testify.

Prior to hearing, the parties are encouraged to acquaint themselves with the hearing process and the issues being appealed. The Hearing Examiner can base a decision only on the facts presented at hearing, in light of what the City's laws require or allow. You need to be prepared to present information that supports your view. The Office of Hearing Examiner has a booklet entitled "**Public Guide to Appeals and Hearings Before the Hearing Examiner**" that explains the hearing process and provides helpful information and suggestions for those participating in hearings. Please contact the Office or visit our website to get this booklet and to get the **Hearing Examiner Rules**, which govern the conduct of hearings. The Hearing Examiner website is www.seattle.gov/examiner/.

When a party writes to the Hearing Examiner requesting something, (these requests are also called "motions"), it is important that the other parties comment in writing to the Hearing Examiner. If the Hearing Examiner does not receive a response from the other parties within 7 days of the date the Examiner receives the motion, it can be assumed that they agree with the request. (The Public Guide explains this and other procedural items.)

Whenever you write to the Hearing Examiner about the appeal, you must also send a copy of that correspondence to each of the other parties. Party representatives in this matter are:

Appellants

Foss Maritime Company
c/o John C. McCullough
McCullough Hill Leary, P.S.
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
jack@mhseattle.com
(206) 812-3388

David R. West
Garvey Shubert Barer
drwest@gslaw.com
(206) 464-3939

Port of Seattle
c/o Traci Goodwin
PO Box 1209
Seattle, WA 98111
goodwin.t@portseattle.org
(206) 787-3702

Patrick Schneider
Foster Pepper
schnp@foster.com
(206) 447-4400

Department

Eleanore Baxendale
City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Eleanore.Baxendale@seattle.gov
(206) 684-8200

Andy McKim
DPD
SMT-18-00
Andy.McKim@seattle.gov
(206) 684-8737

Please contact our office should you have any questions or concerns.

Office of Hearing Examiner Mediation Program

The Office of Hearing Examiner (Office) believes that mediation can help parties reach consensual resolution of some cases filed with the Office. Settlement early in the case can provide a cost effective and flexible way to resolve disputes to the satisfaction of all concerned.

Mediation of Hearing Examiner Cases

Mediation is assisted negotiation. It is a voluntary process in which an impartial, neutral party helps the parties negotiate a solution that is acceptable to them. The mediator does not render a decision and has no authority to impose a settlement.

The Office's mediation program uses mediators associated with the Interlocal Conflict Resolution Group (ILCRG). ILCRG's mediators have experience in many subject areas, including land use and environmental matters. These services are provided to the parties at no cost. (The parties may choose, at their own cost, to use a mediator who is not associated with ILCRG.)

The discussions with the mediator are strictly confidential and will not be shared with the examiner assigned to hear a case. If the mediation does not resolve all of the issues in the case, the case will return to the assigned examiner for resolution of the remaining issues through the contested case process.

Selecting Cases

As each case is filed, the Office will make an initial assessment as to whether mediation may be appropriate. A number of factors will guide the Office in making this initial determination. If the Office determines that mediation may be appropriate, an examiner not assigned to hear the case will contact the parties to explore their interest in mediation and answer questions about the process. If a case is not identified by the

Office for possible mediation, parties may jointly or separately approach the Office to request mediation. In any event, whether the Office recommends mediation or a party requests it, mediation is voluntary: All parties must agree to try the process before a mediation session is actually scheduled.

Should the Case be Mediated?

Not all cases are good candidates for mediation. Some may involve issues of such important principle that for some parties, defeat is preferable to compromise. In others, one or another of the parties may be concerned with creating a precedent. Often, one party is concerned with settling the issues while others would prefer the conflict continue. Some basic questions should be addressed when considering the use of mediated negotiations:

- Are you and your organization willing to consider a compromise?
- Do you have room for flexibility?
- Why do you want to end the dispute?
- Has the conflict reached the point where issues have been defined and joined and you know who the interested parties are?
- Do all parties have some reason to bargain? Does each have the ability to frustrate or make prohibitively costly the unilateral actions of the other(s)?
- Is the outcome uncertain?
- Is there some sense of urgency to settle the conflict?
- Do you have the support of your organization to explore possible mediation? Do they understand the implications of such an effort?
- Ask yourself the same questions regarding the other parties.¹

Procedures

The procedures governing each mediation will vary depending upon the circumstances of the case and the complexity of the issues and parties. In most cases the parties will be expected to be represented at the mediation by all persons necessary to reach an agreement. Mediation is presented as an opportunity to resolve as many issues as possible in the case. To accomplish that, each party must bring every person to the mediation who must approve any substantive decision in the litigation, or send persons who are fully authorized to bind the party. Parties will need to consider in advance of the mediation who can best represent them and evaluate the case in some detail.

Most mediations will begin with opening statements by the parties outlining their views of the issues to be discussed and their substantive positions. A combination of joint sessions, and separate meetings between the mediator and one side (caucuses) may follow, until agreement is reached or further efforts appear futile. You may direct questions to the mediator before, during or after a mediation session.

Confidentiality

All discussions at the mediation, including any statement made by any party, attorney, or other participant, are, in all respects, privileged and cannot be reported, recorded, placed in evidence, used for impeachment, made known to the examiner assigned to hear the case or construed for any purpose as an admission. No party can be bound by anything done or said at the conference unless a settlement is reached.

Settlement Agreements

In mediation, parties have greater control of the decision making process and maximum flexibility in developing a resolution addressing all parties' interests. If a settlement is reached, the agreement is reduced to writing and is binding upon all parties to the agreement. Settlement agreements resulting from a mediation will be presented to the examiner assigned to hear the case for approval in connection with dismissal of some or all of the issues in the case. If an agreement violates state law or City Code or policy, it will not be approved, but otherwise the dismissal will be granted.

Benefits

The Office believes that mediation can help parties reach more creative and flexible outcomes than they might achieve in litigation, and at considerably less expense and delay. The mediator will work with the parties to tailor the mediation process to their particular dispute.

¹ Cormick, Gerald W., "Where, When & How to Use Mediated Negotiations: A checklist for the Potential Participant." Canadian Environmental Mediation Newsletter, York University, Toronto, Volume 3, No. 1, 1988, pp. 7-9.

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

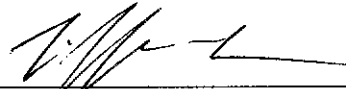
I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order Consolidating Hearing, Notice of Hearing, Important Appeal Information Letter, and Mediation Letter** to each person listed below, or on the attached mailing list, in the matter of **Foss Maritime Company and Port of Seattle**, Hearing Examiner Files: **S-15-001 & S-15-002**, in the manner indicated.

Party	Method of Service
<p>Foss Maritime Company c/o John C. McCullough McCullough Hill Leary, P.S. 701 Fifth Avenue, Suite 6600 Seattle, WA 98104 jack@mhseattle.com</p> <p>David R. West Garvey Shubert Barer drwest@gsblaw.com</p> <p>Laura Counley lcounley@mhseattle.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>
<p>Port of Seattle c/o Traci Goodwin Senior Port Counsel PO Box 1209 Seattle, WA 98111 goodwin.t@portseattle.org</p> <p>Patrick Schneider Foster Pepper schnp@foster.com</p> <p>Brenda Bole boleb@foster.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

<p>Andy McKim DPD SMT-18-00 Andy.McKim@seattle.gov</p>	<p><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</p>
<p>Eleanore Baxendale City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104 Eleanore.Baxendale@seattle.gov</p> <p>Rose Hailey Rose.Hailey@seattle.gov</p> <p>Trudy Jaynes Trudy.Jaynes@seattle.gov</p>	<p><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</p>
<p>Betty Galarosa Betty.Galarosa@seattle.gov</p> <p>Reta Cunnetubby-Gonzales Reta.Gonzales@seattle.gov</p> <p>Denise Minnerly Denise.Minnerly@seattle.gov</p> <p>Sue Putnam Sue.Putnam@seattle.gov</p> <p>PRC PRC@seattle.gov</p> <p>Stephanie Haines Stephanie.Haines@seattle.gov</p> <p>Jerry Suder Jerry.Suder@seattle.gov</p> <p>Shelley Bolser Shelley.Bolser@seattle.gov</p> <p>Roberta Baker Roberta.Baker@seattle.gov</p>	<p><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</p>

Lisa Rutzick Lisa.Rutzick@seattle.gov William Mills William.Mills@seattle.gov	
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Dated: May 27, 2015



Tiffany Ku
Legal Assistant