

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter of the Appeal of:

WASHINGTON COMMUNITY ACTION
NETWORK, et al.

Of a decision by the Director of the Department
of Planning and Development

File No. MUP 15-010-MUP 15-015

DPD # 3012953

**RESPONDENTS' JOINT MOTION TO
EXCLUDE EXPERT TESTIMONY**

In accordance with Hearing Examiner Rule ("HER") 2.16, Applicant Swedish Medical Center ("Swedish") and property owner the Sabey Corporation ("Sabey") hereby move to exclude several identified experts for either or both of two reasons: (1) neither their knowledge, skill, experience, training, nor education qualifies them as experts in the areas of testimony for which they are identified; and (2) testimony on the subjects identified would not assist the Examiner in understanding the evidence or determining an issue of fact. Applicants respectfully request that the Examiner exclude the following witnesses as experts:¹

- Nicholas Richter;
- Lindsey Amtmann;
- Ken Torp;

¹ This motion is filed to exclude the expert testimony of the identified witnesses from the hearing on the appeals of EIS adequacy. Respondents reserve the right to object, for the reasons described herein or any other legally supported reason, to any testimony from these individuals offered as expert testimony during the pre-decisional hearing on the merits of the MIMP.

By filing this motion, Respondents do not concede the admissibility of any evidence or testimony not addressed herein, and reserve the right to object to such evidence or testimony in due course.

JOINT MOTION TO EXCLUDE EXPERT TESTIMONY - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

- Vicky Schiantarelli;
- Ellen Sollod; and
- Claudia Montemayor.

I. EVIDENCE RELIED UPON

Declaration of Steven J. Gillespie and attachments thereto.

II. LEGAL AUTHORITY AND ARGUMENT

The majority of experts identified in this proceeding cannot qualify as experts on the subjects for which Appellants have offered them. The Hearing Examiner, like a trial judge, has discretion to rule on evidentiary matters. *See, e.g., Goehle v. Fred Hutchinson Cancer Research Ctr.*, 100 Wn. App. 609, 617, 1 P.3d 579 (2000). The party offering expert testimony bears the burden of proving the admissibility of the testimony. *E.g. Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 n.10, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993).

The Washington Rules of Evidence set the following standard for expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ER 702. No expert opinion is admissible over objection unless the witness has first been qualified by a showing that he or she has sufficient expertise to state a helpful and meaningful opinion. *Evidence Law and Practice*, Karl B. Tegland, § 702.5 (5th ed.).

An expert on one subject is not an expert on all. Even if the witness has sufficient “knowledge, skill, experience, training, or education” to qualify as an expert as to one topic, “[a]n expert must stay within the area of his expertise.” *Queen City Farms, Inc. v. Cent. Nat. Ins. Co. of Omaha*, 126 Wn.2d 50, 102, 882 P.2d 703 (1994), *as amended* (Sept. 29, 1994), *as clarified on denial of reconsideration* (Mar. 22, 1995); *accord Oxford Gene Tech. Ltd. v. Mergen Ltd.*, 345 F. Supp. 2d 431, 435 (D. Del. 2004) (collecting cases). Several Washington cases establish that someone who qualifies as an expert in one area (such as compliance with the Civil

1 Rights Act, for example) is not qualified to offer expert testimony in another area (such as land
2 use impacts), even if that other area appears superficially similar. In *Boeing Co. v. Sierracin*
3 *Corp.*, for example, the Washington State Supreme Court affirmed the trial court's decision to
4 exclude the expert testimony of an engineer—who could clearly qualify as an expert in some
5 areas—in part because he had no experience with the particular type of “reverse engineering” at
6 issue in the case. 108 Wn.2d 38, 50-51, 738 P.2d 665 (1987). Similarly, when excluding
7 proffered expert testimony in *Goehle v. Fred Hutchinson Cancer Research Ctr.*, the trial judge
8 stated:

9 Again not because she has no expertise. She does have expertise. But she does
10 not have expertise in the area that I'm interested [sic] or that I believe that there
11 might be room for expert testimony.

12 100 Wn. App. 609, 619, 1 P.3d 579 (2000) (quoting transcript of trial court). The Court of
13 Appeals affirmed the exclusion of the expert. *Id.*

14 Furthermore, even if an expert is deemed sufficiently qualified to offer expert opinions,
15 the opinions must assist the trier of fact to understand the evidence or to determine a fact in
16 issue. Tegland, *supra*, § 702.15. “[T]estimony of an expert that constitutes mere personal belief
17 as to the weight of the evidence invades the province of the fact-finder.” *Oxford*, 345 F. Supp.
18 2d at 435.

19 Under these standards, the witnesses discussed below should be excluded as experts.
20 Although many of them could qualify as experts on other topics, they lack the expertise to opine
21 on the topics for which Appellants have identified them.² Respondents respectfully request that
22 the Examiner exclude their expert testimony from the hearing.

23 **A. Nicholas Richter**

24 When Mr. Richter applied for a position on the CAC, he was identified as a “Near
25 Neighbor,” not as a design professional. He served on the CAC in that capacity for a time, but
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² Additionally, although not dispositive, it does not appear from the materials Appellants have provided that any of the witnesses that are the subject of this motion have ever been qualified as an expert in any other proceeding.

1 left, presumably when he accepted his current job in Oakland. Now, Appellants 19th Avenue
2 Block Watch and Squire Park Neighbors offer Mr. Richter as an expert on the following topics:
3 “Transportation, EIS – general, Land use”.³ Appellant Cherry Hill Community Council also
4 offers Mr. Richter and asserts that Mr. Richter’s credentials establish him as an expert in
5 transportation, land use, and urban planning.⁴ All three appellants offer the same CV for Mr.
6 Richter,⁵ which describes an accomplished young man but does not establish expertise on the
7 subjects for which he is offered.

8 While impressive, Mr. Richter’s formal education is largely irrelevant to the issues before
9 the Examiner. In 2006, Mr. Richter earned two Bachelor’s degrees from the University of
10 Washington, covering four majors: Political Science, Philosophy, Scandinavian Area Studies,
11 and Swedish (the language, not the hospital system). None of these fields of study bear on any
12 issue before the Examiner. In 2011, Mr. Richter earned a Master degree from the Royal Institute
13 of Technology in a discipline called “Spatial Planning” that apparently included some
14 coursework in transportation planning. In addition, Mr. Richter appears to have some work
15 experience related to municipal transportation.

16 Mr. Richter’s resume does not establish that he has any experience or education on the
17 subjects of transportation engineering or planning at the campus level. The kind of
18 transportation issues Mr. Richter deals with are system-wide planning issues and different in
19 kind from the issues in this hearing, which are limited to the environmental impacts resulting
20 from a specific proposal. Mr. Richter is not a traffic engineer, and any expertise he possesses
21 does not include matters such as the small-scale, trip generation and impacts analyzed in the EIS,
22 or the proper design of transportation management programs aimed at influencing the individual
23 transportation decisions of employees, patients, and consultants. Mr. Richter’s transportation
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25 ³ See Declaration of Joseph Brogan in Support of Motion to Exclude [Brogan Decl.] Ex. A (Witness list of 19th
26 Ave/Squire Park Neighbors).

⁴ *Id.* Ex. B (Witness List of Cherry Hill Community Council).

⁵ *Id.* Ex. E (Richter CV).

1 experience is to campus-level traffic impacts/planning as macroeconomics is to microeconomics.
2 Expertise in one does not imply expertise in the other, and like the engineer disqualified in
3 *Boeing Co. v. Sierracin Corp* above, Mr. Richter is not qualified to opine on traffic impacts of
4 campus development because there is no showing that he has any education or experience on that
5 subject.

6 Similarly, nothing in his resume suggests that Mr. Richter is possessed of any particular
7 expertise on the subject of environmental review generally—a subject with which the Examiner
8 will likely be the most experienced person in the room. Yet, Mr. Richter is identified as an
9 expert on “EIS – General.” Given the Examiner’s own extensive experience evaluating the
10 adequacy of EISs, it is difficult to imagine how the testimony of someone with no discernable
11 training or experience in environmental review will help the Examiner “to understand the
12 evidence or to determine a fact in issue” regarding EIS adequacy generally.

13 Mr. Richter’s CV does not explain what his “Spatial Planning” degree entails, nor
14 whether such a degree obtained in Sweden, which presumably relies on planning principles
15 common to Sweden, has any relevance to the state of the art of campus master planning in
16 Seattle. It is even less clear that Mr. Richter’s degree equips him to provide meaningful
17 evaluation of the environmental impacts flowing from such plans.

18 As a former CAC member and former resident of Squire Park whose parents continue to
19 reside in Squire Park, Mr. Richter is undoubtedly very familiar with the neighborhood and policy
20 issues surrounding the proposal, at least as they existed at the time he left the CAC in 2014.
21 However, that familiarity makes him a knowledgeable citizen and potential fact witness, not an
22 expert. The Examiner should limit Mr. Richter to factual testimony and disallow any expert
23 opinion.

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1 **B. Lindsey Amtmann**

2 The 19th Avenue Block Watch named Ms. Amtmann as an expert who will offer
3 testimony regarding “EIS – General.”⁶ They provided no information regarding Ms. Amtmann’s
4 background, other than she is the proprietor of a company called “Lindsey Amtmann LLC,”
5 which apparently provides “Science writing and editing, science translation, environmental
6 planning, environmental compliance, technical writing, technical editing, project management,
7 NEPA, SEPA.”⁷ The listing for her business on the state’s Office of Minority and Women’s
8 business Enterprises database clarifies that the company provides “consulting and advising in the
9 field of environmental regulation, and science writing.”⁸ Although Appellants did not provide it,
10 an internet search revealed that Ms. Amtmann possesses an impressive, though irrelevant,
11 educational background that includes a bachelor’s degree from Duke University in the fields of
12 dramatic literature and anthropology, and a master’s degree from the University of Michigan in
13 natural resources.⁹

14 It is not clear from Appellant’s witness disclosure what topics Ms. Amtmann will be
15 called to testify about, other than “EIS – General.” It appears that any expertise Ms. Amtmann
16 possesses pertains to the process of reducing technical analysis to writing. But this hearing does
17 not turn on whether the EIS is well-written. The adequacy of the EIS depends on whether it
18 reasonably identified and discussed the elements of the environment identified in the scoping
19 process, and Ms. Amtmann’s background does not appear to prepare her to address any of these
20 elements of the environment.

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25 ⁶ Brogan Decl. Ex. A.

26 ⁷ *Id.* Ex. F.

⁸ *Id.* Ex. G.

⁹ *Id.* Ex. H.

1 **C. Ken Torp**

2 Squire Park Community Council, Concerned Neighbors, and 19th Avenue Block Watch
3 all identified Mr. Torp as an expert in transportation.¹⁰ His expertise is purportedly established
4 in the document titled “Kenneth H. Torp/Bona Fides/Transportation Expert,” which highlights
5 some of Mr. Torp’s “decade of experience in the field of ground transportation.”¹¹ Similar to
6 Mr. Richter’s transportation planning background, Mr. Torp’s transportation experience appears
7 to pertain to public administration of large-scale, system-wide issues, including funding and
8 capital acquisition for state and regional transportation systems. In addition, Mr. Torp managed
9 the Colorado Department of Transportation. Mr. Torp may well qualify as an expert in
10 management of a governmental agency, or procurement and construction of transportation
11 networks, but nothing in Mr. Torp’s bona fides establishes him as an expert in campus
12 transportation planning or impacts.

13 Mr. Torp does not list his education, and there is no indication he is an engineer by
14 training. He lists no experience drafting, reviewing, or implementing transportation management
15 programs or transportation demand management. He lists no experience evaluating the
16 environmental review of campus-level transportation impacts. He lists no experience estimating
17 trip generation, intersection impacts resulting from campus development, or any other relevant
18 element of the EIS or MIMP transportation analysis.

19 Mr. Torp is a resident of the neighborhood and will presumably offer factual testimony
20 during the pre-decisional hearing. But the Examiner should limit Mr. Torp to factual testimony
21 and disallow any expert opinion.

22 **D. Vicky Schiantarelli**

23 Appellants 19th Avenue Block Watch and Concerned Neighbors each offered Ms.
24 Schiantarelli as an expert witness. Concerned Neighbors intend to call her to “testify to the
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26 ¹⁰ See Brogan Decl. Ex. A-C

¹¹ *Id.* Ex. I.

1 overall adequacy of the EIS related to her qualifications as a EIS/SEPA subject matter expert.”¹²
2 19th Avenue Block Watch will call her as an expert on “EIS/EA Review (light, glare, air quality,
3 shadow, noise, land use).”¹³ Yet nothing in Ms. Schiantarelli’s education or experience qualifies
4 her to testify to these issues.

5 Ms. Schiantarelli’s resume lists study at the University of Washington in the fields of
6 public affairs and zoology, though it does not identify any degrees she attained.¹⁴ Her listed
7 work experience centers around contract administration at the state and local level. Her roles
8 included ensuring compliance with federal civil rights law, as well as overseeing a Consultant
9 Evaluation Committee for Seattle Public Utilities. Although she appears to have reviewed
10 environmental documents during her work experience, that review pertained to the specific areas
11 of her work. Nothing in her experience suggests any particular expertise in the substantive areas
12 of light, glare, air quality, shadows, noise, or land use. The experience listed does not qualify her
13 “as a EIS/SEPA subject matter expert.” Based on the materials provided by Appellants, there is
14 no reason to believe that Ms. Schiantarelli is in a position to help the Examiner “to understand
15 the evidence or to determine a fact in issue” regarding EIS adequacy.

16 Ms. Schiantarelli is a resident of the neighborhood and was very involved in the CAC
17 process. She will presumably offer factual testimony during the pre-decisional hearing and the
18 EIS appeal. But the Examiner should limit her to factual testimony and disallow any expert
19 opinion.

20 **E. Ellen Sollod**

21 Appellants 19th Avenue Block Watch, Concerned Neighbors, and Squire Park all named
22 Ms. Sollod as an expert. 19th Avenue Block Watch identified the scope of her testimony as
23 “Model; light/shadow, land use.”¹⁵ Although not clear, it appears that this indicates that Ms.

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25 ¹² Brogan Decl. Ex. D.

26 ¹³ *Id.* Ex. A.

¹⁴ *Id.* Ex. J.

¹⁵ Brogan Decl. Ex. A.

1 Sollod constructed the purportedly scale model that 19th Avenue Block Watch will introduce at
2 the hearing. Concerned Neighbors wrote that Ms. Sollod “[w]ill testify based on her
3 qualifications as design professional as well as to the adequacy of the EIS related to Public
4 views, shadows and the blockage of access to sunlight.”¹⁶ Squire Park wrote that Ms. Sollod will
5 testify to “Land Use and Aesthetics/Light, Glare and Shadows.”¹⁷ Nothing in the resume
6 submitted suggests that Ms. Sollod possesses any specialized expertise in any of these areas, with
7 the possible exception of aesthetics.

8 Ms. Sollod is an artist with 20 years’ experience and several public art installations.¹⁸
9 She lists scale models of site plans, architecture, and public art projects among her abilities. She
10 has a Master of Arts in Urban Studies and is the vice chair of the Seattle Design Commission.
11 Yet her resume does not explain what her Urban Studies entailed, nor how that or experience
12 with the Design Commission endows her with any particular expertise in the fields of land use,
13 public views, shadows, light/glare, or blockage of sunlight.

14 **F. Claudia Montemayor**

15 Concerned Neighbors wrote that Ms. Montemayor “[w]ill testify based on her
16 qualifications as design professional as well as to the adequacy of the EIS related to Public
17 views, shadows and the blockage of access to sunlight”—exactly the testimony they expect to
18 offer from Ellen Sollod.¹⁹ Her CV does not specify any education or experience that pertains to
19 the specific areas identified.²⁰ An internet search revealed that Ms. Montemayor holds a BA
20 from Universidad La Salle, A.C., and attended the Academia de San Carlos.²¹ She is currently a
21 co-founder and Chief Design Officer for PurpleWall, an internet start-up that provides affordable
22 interior design solutions to clients over the internet.

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24 ¹⁶ *Id.* Ex. D.

25 ¹⁷ *Id.* Ex. C.

26 ¹⁸ *Id.* Ex. K.

¹⁹ Brogan Decl. Ex. D.

²⁰ *Id.* Ex. L.

²¹ *Id.* Ex. M.

1 Based on the materials Concerned Neighbors provided, as well as publicly available
2 information on the internet, Ms. Montemayor appears to have education and experience enough
3 to establish her expertise in interior design and furnishings. But these topics have nothing to do
4 with the issues of public views, shadows, and the blockage of access to sunlight, for which her
5 testimony has been offered. At the master planning stage, buildings have not been designed at
6 even a conceptual level, so expert testimony on interiors is premature at best. Ms. Montemayor's
7 expert testimony should be excluded.

8 III. CONCLUSION

9 Respondents respectfully request that the Examiner exclude expert testimony of all
10 witnesses who do not meet the standards set forth in the Rules of Evidence or case law. Any of
11 these people may comment during the public comment portion of the pre-decisional hearing, in
12 common with the rest of the public, or as fact witnesses during the SEPA appeal proceeding.
13 But as discussed herein, the testimony of people who do not qualify as experts in the areas to
14 which they offer testimony is not entitled to the weight afforded to expert testimony.

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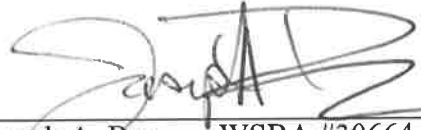
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1 DATED this 29th day of June, 2015.

2 FOSTER PEPPER PLLC

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4 _____
5 Joseph A. Brogan, WSBA #30664
6 Steven J. Gillespie, WSBA #39538
7 Attorneys for Swedish Medical Center Cherry
8 Hill

9 McCULLOUGH HILL LEARY, P.S.

10  with
11 _____ permission
12 John C. McCullough, WSBA #12740
13 Courtney A. Kaylor, WSBA # 27519
14 Katie Kendall, WSBA # 48164
15 Attorneys for Sabey Corporation

16 DEPARTMENT OF PLANNING AND
17 DEVELOPMENT

18  with
19 _____ permission
20 Stephanie Haines
21 Senior Land Use Planner for City of Seattle