

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the matter of the Appeal of:

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

WASHINGTON COMMUNITY ACTION
NETWORK, et al.

DPD # 3012953

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

**RESPONDENTS' OPPOSITION TO
APPELLANT 19TH AVENUE BLOCK
WATCH'S AMENDED MOTION TO
EXCLUDE APPLICANTS' EXPERT
TESTIMONY**

In its motion, Appellant 19th Avenue Block Watch ("19th Avenue") does not oppose the inclusion of John Perlic, P.E., Parametrix, Inc., in Respondents Swedish Medical Center ("Swedish") and Sabey Corporation's ("Sabey") Amended Witness and Exhibit List. Instead, Appellant moves to exclude Mr. Perlic because Respondents moved to exclude a number of Appellants' expert witnesses. This is not a valid basis for exclusion of Respondents' witness. Mr. Perlic will provide valuable peer review testimony of the traffic analysis conducted for the Final Environmental Impact Statement conducted for the Swedish Cherry Hill Major Institution Master Plan and will replace two identified witnesses—David Markley and David Johnson—who are no longer available to testify during the week of July 13, 2015. Respondents'

1 substitution of Mr. Perlic as an expert witness in no way prejudices Appellant 19th Avenue.
2 Accordingly, Respondents respectfully request that the Hearing Examiner deny 19th Avenue's
3 motion to exclude the testimony of John Perlic.

4 I. FACTS

5 Pursuant to the Hearing Examiner's Amended Pre-Hearing Order, all parties were
6 required to file final witness and exhibit lists with the Office of the Hearing Examiner on June
7 12, 2015. Respondents Swedish and Sabey filed and served their final witness and exhibit list on
8 June 12, 2015. A number of witnesses were identified by Respondents to provide possible
9 testimony regarding issues related to traffic and transportation. Included on the proposed witness
10 and exhibit list were David Markley P.E., Transportation Solutions, Inc. and David Johnson,
11 P.E., who were both identified to testify regarding traffic and transportation issues.

12 Counsel for Appellant Washington Community Action Network, Claudia Newman,
13 sought clarification, via email, regarding Respondents' proposed traffic and transportation
14 witnesses. *See* Declaration of Katie Kendall, Exh. 1 ("Kendall Decl."). Vicky Schiantarelli, the
15 authorized representative for Appellant 19th Avenue, was copied on the correspondence. *Id.* Ms.
16 Newman requested that Respondents clarify the extent that the testimony from the proposed
17 traffic and transportation witnesses would overlap. In response, counsel for Sabey, Courtney
18 Kaylor, explained the role for each potential traffic and transportation witness. Kendall Decl.,
19 Exh. 2. Specific to the witness at issue in this motion, Ms. Kaylor explained that either David
20 Johnson or David Markley (but probably not both) may testify regarding peer review of the
21 traffic analysis. *Id.* Ms. Kaylor also explained that Mike Swenson would testify about the
22 traffic analysis in the EIS; Jessica Szelag or Mike Rimoin (but probably not both) may testify
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1 regarding the TMP; John Shaw may testify regarding the City's review of the traffic analysis; and
2 Reiner Blanco or Cristina Van Valkenburg (but probably not both) may testify regarding SDOT's
3 review of the traffic analysis. *Id.* Ms. Kaylor assured Ms. Newman that Respondents had no
4 intention of providing duplicate testimony. Ms. Schiantarelli was also copied on Ms. Kaylor's
5 response.
6

7 Counsel for Respondents then discovered that neither Mr. Johnson nor Mr. Markley were
8 available for the SEPA hearing. Accordingly, Respondents filed an Amended Witness and
9 Exhibit List on June 29, 2015, that added John Perlic, a Professional Engineer from Parametrix,
10 Inc., and removed Mr. Markley and Mr. Johnson. Respondents explained to the Appellants, via
11 email, that Mr. Perlic was included as a witness to replace Mr. Johnson and Mr. Markley, who
12 are no longer available. Kendall Decl., Exh. 3. At the time of filing the Amended Witness and
13 Exhibit List, Respondents were not in possession of Mr. Perlic's resume, and noted that it was
14 forthcoming. Mr. Perlic's resume is now attached as Exhibit 4 of the Kendall Declaration and
15 was provided to all appellants, via email, on July 8, 2015.
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17 Neither Appellant 19th Avenue nor any other appellant has sought to depose Mr. Johnson,
18 Mr. Markley, or any of Respondents' proposed witnesses.
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20 II. EVIDENCE RELIED UPON

21 This response relies on the Declaration of Katie Kendall and the pleadings and other
22 documents on file with the Hearing Examiner.
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24 III. ARGUMENT

25 Appellant 19th Avenue seeks to exclude John Perlic as an expert witness primarily
26 because Respondents have sought to exclude the expert testimony of a number of Appellant's
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1 witnesses.¹ Indeed, Appellant asks the Hearing Examiner to exclude Mr. Perlic's testimony only
2 if the Hearing Examiner excludes Appellant's expert witnesses. This request, however, does not
3 provide a reasonable legal basis for exclusion of an expert and must be denied.

4 Appellant further argues that Mr. Perlic should be excluded as an expert because Mr.
5 Perlic was not identified in the original witness and exhibit list filed on June 12, 2015; Mr.
6 Perlic's resume was not provided on June 29, 2015; and that Respondents have identified six
7 other witnesses to testify regarding traffic and transportation. For the reasons set forth below,
8 the Hearing Examiner must deny Appellant's request.

9 As outlined in Mr. Perlic's resume, Mr. Perlic is imminently qualified to testify regarding
10 the traffic and transportation analysis. Mr. Perlic has a Master's degree in Civil Engineering, is a
11 Registered Professional Engineer, and has managed the preparation of over 200 traffic impact
12 studies in the course of his career. Kendall Decl., Exh. 4. He will provide valuable testimony to
13 the Hearing Examiner regarding the adequacy of the traffic and transportation analysis in the
14 FEIS.

15 Appellant 19th Avenue has not alleged it is prejudiced by the fact that Respondents have
16 substituted Mr. Perlic, who will provide peer review testimony of the traffic analysis, to replace
17 two witnesses identified to provide peer review testimony of the traffic analysis. Kendall Decl.,
18 Exh. 2. Appellants have not sought to depose any of Respondents' proposed witnesses.
19 Accordingly, the substitution of Mr. Perlic and the delayed submission of Mr. Perlic's resume
20 will not affect Appellant's hearing preparation in any way.

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26 ¹ In its Amended Motion to Exclude, Appellant 19th Avenue also sought to exclude the expert testimony of Jessica
27 Szelag and Mike Rimoin. The Hearing Examiner denied Appellant's motion to exclude Ms. Szelag and Mr. Rimoin
as untimely by order dated July 7, 2015.


1 To the extent Appellant raises a concern regarding the number of witnesses that
2 Respondents have identified, they are precluded from doing so. Respondents Witness and
3 Exhibit List, filed on June 12, 2015, identified eight potential witnesses to testify regarding
4 traffic and transportation issues. It is too late for 19th Avenue to raise a concern regarding the
5 number of Respondents' witnesses. Moreover, as explained in Ms. Kaylor's response to Ms.
6 Newman's request for clarification, not all of the identified witnesses will testify, and
7 Respondents will ensure that the witnesses will not provide duplicative testimony. Kendall
8 Decl., Exh. 2. Accordingly, there is no legal justification for the Hearing Examiner to exclude
9 Mr. Perlic's expert testimony.
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11 IV. CONCLUSION

12 For the reasons stated above, Respondents respectfully request that Appellant 19th
13 Avenue's motion to exclude the expert testimony of John Perlic be denied.
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15 DATED this 8th day of July, 2015.
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17 FOSTER PEPPER PLLC

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