

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

**WASHINGTON COMMUNITY ACTION NETWORK, 19TH
AVE BLOCK WATCH, CHERRY HILL COMMUNITY
COUNCIL, SQUIRE PARK COMMUNITY COUNCIL,
PATRICK ANGUS, ET AL., AND CONCERNED
NEIGHBORS OF SWEDISH CHERRY HILL**

from a SEPA Determination by the Director,
Department of Planning and Development

Hearing Examiner Files:

**MUP-15-010 (W)
MUP-15-011 (W)
MUP-15-012 (W)
MUP-15-013 (W)
MUP-15-014 (W)
MUP-15-015 (W)**

Department Reference:
3012953

**ORDER ON MOTIONS TO
EXCLUDE EXPERT
TESTIMONY**

The Respondents, Swedish Medical Center, Sabey Corporation, and the Director of the Department of Planning and Development, filed a joint motion to exclude the testimony of several witnesses identified as experts by the Appellants in this consolidated SEPA appeal. Appellants 19th Avenue Block Watch/Squire Park Neighbors and Cherry Hill Community Council filed responses to the motion, and 19th Avenue Block Watch/Squire Park Neighbors later filed an amended response to the motion. On July 3, 2015, 19th Avenue Block Watch/Squire Park Neighbors filed a motion to exclude one of the Respondents' identified expert witnesses, and on July 6, 19th Avenue Block Watch/Squire Park Neighbors filed an amended motion seeking to exclude the testimony of two more of the Respondents' witnesses.

Respondents' Motion To Exclude

Nicholas Richter. Mr. Richer is offered by several Appellants as an expert who will present testimony on transportation, unspecified parts of the EIS, urban planning and land use. From the information supplied by the Appellants, it appears that Mr. Richter has some background in transportation planning and urban planning. He has significant expertise in other areas not relevant to the issues on appeal. The specific subject matter of Mr. Richter's proposed testimony is not clear from the documents on file. It may be that the Respondents' objection to his testimony goes to the weight of the testimony and not its admissibility. Rather than striking Mr. Richter's name from the Appellants' witness lists for failure to identify the nature and scope of his expected testimony, the Examiner reserves ruling on the Respondents' motion to exclude Mr. Richter's testimony as an expert and will address it at the hearing.

The Appellants have represented that Mr. Richter and several other witnesses they have designated as experts will be testifying during the time for public testimony on the MIMP as well during the contested hearing on the SEPA appeals. The parties are reminded that anyone who testifies as an expert during the public testimony portion of the hearing may be subject to reasonable cross examination. See *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 34-35, 873 P.2d 498 (1994); *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 870-71, 480 P.2d 489 (1971).

Lindsey Amtmann. Ms. Amtmann is offered by 19th Avenue Block Watch as an expert who will present testimony on “EIS-general”. No further detail is offered about the specific subject matter of Ms. Amtmann’s testimony or her qualifications. It appears from information discovered by the Respondents on Ms. Amtmann’s “LinkedIn” page that she may have some background in relevant environmental subjects and/or EIS preparation. Again, rather than striking Ms. Amtmann’s name from 19th Avenue Block Watch’s witness list for failure to identify the nature and scope of her expected testimony, or provide information on her qualifications, the Examiner reserves ruling on the Respondents’ motion to exclude Ms. Amtmann’s testimony as an expert and will address it at the hearing.

Ken Torp. Mr. Torp is offered by 19th Avenue Block Watch, Squire Park Community Council and Concerned Neighbors of Swedish Cherry Hill as an expert in transportation. However, the experience highlighted in his resume appears to be at an administrative level. There is no indication that he is a transportation engineering or transportation planner experienced in analyzing transportation impacts for purposes of environmental review. The Respondent’s motion to exclude Mr. Torp as an expert witness is **GRANTED**. He may offer factual testimony but not expert opinion.

Vicky Schiantarelli. Ms. Schiantarelli is offered by 19th Avenue Block Watch, Squire Park Community Council and Concerned Neighbors of Swedish Cherry Hill as an overall subject matter expert in SEPA and EISs, and specifically concerning “light, glare, air quality, shadow, noise and land use”. Ms. Schiantarelli’s list of qualifications demonstrates experience in contract administration, procurement and grants, and EEO, as well as review of EISs and EAs in areas directly related to her work experience. Although she has extensive experience with the MIMP process for Providence/Swedish Cherry Hill, she has not been shown to qualify as a subject matter expert in EISs or SEPA. The Respondent’s motion to exclude Ms. Schiantarelli as an expert witness is **GRANTED**. She is expected to offer factual testimony but may not offer expert opinion.

Ellen Sollod. Ms. Sollod is offered by 19th Avenue Block Watch, Squire Park and Concerned Neighbors of Swedish Cherry Hill as an expert on the adequacy of the EIS concerning public views, shadows, aesthetics, light and glare. Ms. Sollod is a public artist as well as being vice chair of the Seattle Design Commission. Nothing in the record indicates that she has particular expertise in the areas for which she is offered as an expert. However, it appears that she has constructed a model of the proposed MIMP, and her resume indicates that she may have experience with such models. Because the actual scope of Ms. Sollod’s testimony is not clear from the record, the Examiner reserves ruling on the Respondents’ motion to exclude it and will address the motion at the hearing.


Claudia Montemayor. Ms. Montemayor is offered by Concerned Neighbors of Swedish Cherry Hill as an expert on the adequacy of the EIS concerning public views, shadows, and blockage of sunlight. It appears from the record that Ms. Montemayor is a design professional with expertise in interior design and furnishings. She has not been shown to have expertise in the subject areas for which she is offered as an expert. Respondent's motion to exclude Ms. Montemayor as an expert witness is **GRANTED**. She may not offer expert opinion.

19th Avenue Block Watch/Squire Park Neighbors' Motion to Exclude

John Perlic, P.E. Mr. Perlic, who is employed by Parametrix, Inc., a large professional consulting company, is offered by the Respondents as an expert in traffic and transportation. 19th Avenue Block Watch/Squire Park Neighbors object to Mr. Perlic's testimony because he was not identified as a witness until June 29, 2015, over two weeks after the established deadline for filing final witness and exhibit lists, and as of July 8, 2015, the Respondents had not produced Mr. Perlic's resume. These Appellants also note that the Respondents have listed six other witnesses who are to testify on topics similar to those listed for Mr. Perlic. Under the Hearing Examiner Rules of Practice and Procedure, the Respondents' response to the motion to exclude Mr. Perlic as an expert witness is not due until July 10, 2015, one business day prior to the start of the hearing in this matter. The Examiner will address the motion at the hearing.

Jessica Szelag and Mike Rimoin. Ms. Szelag and Mr. Rimoin were included in the Respondents' witness and exhibit lists filed on June 12, 2015. On July 6, 2015, 19th Avenue Block Watch/Squire Park Neighbors filed an "Amended Motion to Exclude Applicants' Expert Testimony" that added Ms. Szelag and Mr. Rimoin as witnesses who should not be allowed to offer expert testimony. The Respondents' response to the motion would be due on July 13, 2015, the scheduled date of the hearing in this case. The Amended Motion to Exclude is untimely and is therefore **DENIED**.

Entered this 7th day of July, 2015


Sue A. Tanner, Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
Fax: (206) 684-0536

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

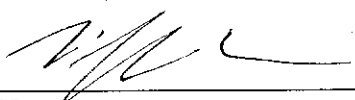
I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motions to Exclude Expert Testimony** to each person listed below, or on the attached mailing list, in the matter of **Washington Community Action Network, 19th Ave Block Watch, Cherry Hill Community Council, Squire Park Community Council, Patrick Angus et al, and Concerned Neighbors of Swedish Cherry Hill.** Hearing Examiner Files: **MUP-15-010 (W), MUP-15-011 (W), MUP-15-012 (W), MUP-15-013 (W), MUP-15-014 (W), and MUP-15-015 (W).** in the manner indicated.

Party	Method of Service
Washington Community Action Network c/o Claudia M. Newman Bricklin & Newman, LLP 1001 Fourth Avenue, Suite 3303 newman@bnd-law.com Peggy Cahill cahill@bnd-law.com	<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
Sabey Corporation c/o McCullough Hill Leary P.S. 701 5 th Avenue, Suite 660 Seattle, WA 98104 Jack McCullough jack@mhseattle.com Courtney Kaylor courtney@mhseattle.com Katie Kendall kkendall@mhseattle.com Laura Counley lcounley@mhseattle.com	<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

Stephanie Haines DPD SMT-18-00 Stephanie.Haines@seattle.gov	<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
19 th Ave Block Watch c/o Vicky Schiantarelli 541 19 th Ave Seattle, WA 98122 vickymatsui@hotmail.com	<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
Cherry Hill Community Council c/o Mary Pat Dileva 827 17 th Ave Seattle, WA 98122 catlady1@q.com	<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
Squire Park Community Council c/o Bill Zosel 910 13 th Avenue Seattle, WA 98122 bill.zosel@gmail.com	<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
Patrick Angus, et al. c/o Dean Paton 733 16 th Avenue Seattle, WA 98122 dgpaton@me.com	<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
Swedish Medical Center c/o Joseph A. Brogan Foster Pepper, PLLC 1111 Third Ave, Suite 3400 Seattle, WA 98101 brogj@foster.com Steven J. Gillespie gills@foster.com	<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

Brenda Bole boleb@foster.com	
Steve Sheppard DON Steve.Sheppard@seattle.gov	<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

Dated: July 7, 2015



Tiffany Ku
Legal Assistant