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8 BEFORE THE HEARING EXAMINER  
9 CITY OF SEATTLE

10 In the Matter of the Appeal of:

File No. MUP-15-010

11 WASHINGTON COMMUNITY ACTION  
12 NETWORK, et. al.

DPD# 3012953

13 of a decision by the Director of the Department  
14 of Planning and Development.

SWEDISH MEDICAL CENTER AND  
SABEY CORPORATION'S MOTION TO  
STRIKE

15  
16 **I. INTRODUCTION**

17 Respondents Swedish Medical Center and Sabey Corporation move to strike the Reply to  
18 Respondents' Joint Response ("Reply") filed by Dean Patton and CAC Members ("CAC  
19 Members"). The CAC Members did not participate in the hearing or file an opening brief. In  
20 addition, while titled a "Reply," the document offered actually presents written comments on the  
21 Environmental Impact Statement ("EIS") submitted for the first time. It is far too late for the  
22 CAC Members to submit their first substantive argument in this case. For these reasons, the  
23 Hearing Examiner should strike the Reply.  
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26 **II. STATEMENT OF FACTS**

27 The CAC Members did not provide evidence in any form (testimony or exhibits) or offer  
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1 argument at the SEPA appeal in this matter. Indeed, their designated representative, Dean  
2 Patton, was absent from the hearing room for all or most of the appeal proceedings. The CAC  
3 Members also did not file a post-hearing brief. Nevertheless, the CAC Members filed a  
4 document entitled "Reply to Respondents' Joint Response" but in actuality containing comments  
5 on the EIS submitted for the first time.  
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### 7 **III. STATEMENT OF THE ISSUES**

8 The issue presented is whether the Hearing Examiner should strike the Reply.

### 9 **IV. EVIDENCE RELIED UPON**

10 This motion relies on the pleadings and papers on file in this matter.  
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### 12 **V. ARGUMENT**

13 The law is well established that, "[w]ithout supporting argument or authority, 'an  
14 appellant waives an assignment of error.'" *Collins v. Clark County Fire District No. 5*, 155 Wn.  
15 App. 48, 231 P.3d 1211 (2010), *as corrected on denial of reconsideration* (Apr. 20, 2010). A  
16 party cannot avoid this rule by delaying its argument until reply; issues raised in reply are too  
17 late to warrant consideration. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809,  
18 828 P.2d 549 (1992).  
19

20 In addition, the Hearing Examiner has the authority to schedule hearings. Hearing  
21 Examiner Rule of Practice and Procedure ("Rule") 2.07. Each party has the right to notice of  
22 hearing and to present evidence and argument at the hearing. Rule 3.13(a). Where a party has  
23 designated a representative, the representative shall exercise the rights of the party. Rule 3.13(c).  
24 The Hearing Examiner may dismiss an appeal where, without good cause, the appellant fails to  
25 appear or is unprepared to proceed at a scheduled and properly noticed hearing. Rule 3.14.  
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1 Here, the Hearing Examiner set the hearing dates in this matter and provided notice of the  
2 schedule to the parties. The CAC Members did not object. Nevertheless, without explanation,  
3 CAC Members did not participate in the SEPA appeal hearing. They did not present testimony,  
4 exhibits or argument. They also did not file a post-hearing brief. Now, for the first time in their  
5 Reply brief, the CAC Members explain that their designated representative did not attend much  
6 of the SEPA hearing because of a previously undisclosed conflict and the “irregular” schedule of  
7 witnesses. As the Hearing Examiner knows, irregularly scheduled witnesses are inherent in  
8 appeal hearings. Also, on advance request, the Hearing Examiner accommodated the schedules  
9 of a number of witnesses. The CAC Members did not timely request accommodation. Good  
10 cause does not exist for their complete failure to present testimony, exhibits, argument or post-  
11 hearing briefing.  
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14 The CAC Members cannot cure the defect in their participation by presenting argument  
15 for the first time on reply. *Cowiche Canyon Conservancy, supra*, 118 Wn.2d at 809. Further,  
16 while titled a “Reply,” the document submitted by the CAC Members is, in actuality, substantive  
17 written testimony on the EIS. *See* Reply, p. 2 (“here is what we say regarding the EIS[.]”) The  
18 deadline for presenting testimony on SEPA was prior to the close of the hearing on Friday July  
19 17.  
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21 For these reasons, the Hearing Examiner should decline to consider the CAC Members’  
22 late-filed submission and should strike the Reply.  
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## 24 VI. CONCLUSION

25 For these reasons, the Hearing Examiner should strike the Reply.  
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1 Respectfully submitted this 13<sup>th</sup> day of August, 2015.

2 McCULLOUGH HILL LEARY, P.S.

3  
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