

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

RECEIVED BY

2015 OCT -2 PM 4: 25

In the Matter of the Appeal of

**NEIGHBORS ENCOURAGING
REASONABLE DEVELOPMENT**

From a Decision and Interpretation issued
by the Director, Department of Planning
and Development

Hearing Examiner Files
MUP-15-022(W) OFFICE OF
S-15-003 HEARING EXAMINER

(DPD Files 3014342 and 3015697
Interpretation No. 13-005)

APPELLANT'S REQUEST FOR RECUSAL

Pro Tem Hearing Examiner Klockars:

Thank you for providing us with the additional facts and work history specific to your role as a former Assistant City Attorney for the City of Seattle, and further, your professional interactions and responsibilities relating to your team-members within the Department of Planning and Development ("DPD") on September 28, 2015, as we had requested on September 23, 2015, upon learning additional facts about your professional career with the City of Seattle.

Based on these additional facts, Neighbors Encouraging Reasonable Development ("NERD") respectfully requests that you recuse yourself from hearing this matter.

Upon learning, through our own research, about the facts involving your responsibilities within the City Attorney's Office (which we understand is a large department within the City), we believe you reasonably could have personal bias, prejudice, and/or impaired objectivity, and therefore are not comfortable with you hearing this matter for the following reasons:

- When NERD initially received notification on August 28, 2015 about your assignment for our hearing and decision, only the following was disclosed to NERD:

"Ms. Klockars has been a pro tem hearing examiner for many jurisdictions within the Puget Sound area in recent years, and is a former Deputy Hearing Examiner and former Assistant City Attorney for the City of Seattle."

At first glance, this simply highlights your professional qualifications and did not otherwise give NERD any reasonable cause for concern. However, we do believe and feel strongly that your prior professional responsibilities within the City Attorney's Office, assigned to the land use section, is a significant and material fact that the Appellant needs to know, to make a decision on whether or not to request the recusal of an examiner.

In addition, your role as the Director of the section, with primary duties and responsibilities advising team-members within the DPD on legal issues, is a significant and material fact that the Appellant needs to know, to make a decision on whether or not to request the recusal of an examiner.

Lastly, your role representing the City in court when hearing examiner decisions were appealed, is a significant and material fact that the Appellant needs to know, to make a decision on whether or not to request the recusal of an examiner.

NERD finds it especially troubling that these facts were not also provided in the August 28th notification of your assignment for our hearing and decision, or voluntarily any time after that date until specifically requested by NERD. NERD was forced to discover AND request these facts through our own research, which we believe to be an unreasonable expectation for any Appellant, when such significant and material information could have been easily provided in the original notification.

Though it may be through no fault or decision of your own, the Office of the Hearing Examiner's determination to disclose only that you were a "former Assistant City Attorney for the City of Seattle" has the appearance of an attempt to "hide the ball", or at a minimum, severely under-represent your past professional involvement in duties, roles, and responsibilities which in the past, could have been adversarial to those of the Appellant.

These actions, again perhaps through no fault or decision of your own, show the potential for personal bias and prejudice against the Appellant and has the appearance of actions that have already affected objectivity in this hearing. For these reasons, we request that you recuse yourself from this matter.

- Through our direct request to you sent on September 23, 2015, upon learning through our own research, about your responsibilities within the City Attorney's Office, we were informed of the following relating to your prior professional interactions and responsibilities relating to your team-members within the DPD:

"I was employed by the City Attorney's office from 1989 to 2006 when I retired from the City."

"I know that I gave advice to Mr. McKim on many occasions and likely advised Mr. Suder as well. Mr. McKim was rarely represented by our office before the hearing examiner and I have no specific memory of ever representing him, though during that long a tenure I may have."

I have been in the professional workforce for 17 years across two different firms, and I have formed lifelong professional and personal friendships, that have continued long after I left my employer, and long after my colleagues changed employers. Some of my best friends to this day, originated through my professional network with the same employer, particularly those that I worked directly with.

As an employee of the City of Seattle for 17 years, with responsibilities that included, "chief among my duties was advising staff at DPD on legal issues. I also represented the City in court when hearing examiner decisions were appealed", I believe that you too have forged deep professional and personal friendships over the course of a 17 career with your team at the DPD. We believe this is a reasonable assumption.

We do not intend to offend you or call into question your professionalism, but having worked directly with the DPD personnel in this hearing, and likely having established a professional and/or personal friendship with their direct and/or indirect supervisor(s), other personnel in Planning and/or other sub-departments within DPD (Administration, City Design, City Green Building, Public

Relations, Code Compliance Program, Applicant Services Center, and/or Operations), we believe it is reasonable that you could have unconscious personal bias, prejudice, and/or impaired objectivity as a result of your prior professional duties, roles, and responsibilities specifically with the DPD personnel in this hearing, and/or other City personnel who could be potentially negatively impacted by a ruling on this hearing in NERD's favor. For these reasons, we request that you recuse yourself from this matter.

Conclusion:

For the reasons set forth above, it is our belief that the assigned Examiner cannot remain objective in hearing this matter. Therefore, under section 2.12 of the Hearing Examiner Rules of Practice, NERD respectfully requests that Pro Tem Hearing Examiner Klockars recuse herself from this hearing.

Respectfully,



Chuck Burkhalter Jr.

On behalf of NERD

Dated this 2nd day of October, 2015, at Seattle, Washington



rom:

10/02/2015 16:22

#614 P.001/004

RECEIVED BY
2015 OCT -2 PM 4: 25

OFFICE OF
HEARING EXAMINER

To Hearing Examiner
Organization City of Seattle
Fax 206.684.0536

From Charles H Burkhalter Jr
Department
Telephone
Fax

Copy to

Date October 1, 2015

Ref NERD Response & Declaration

Subject **NERD** *REQUEST FOR
REWSAL*

Page 1 of 4