

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

EPIC ET AL.

from a decision issued by the Director, Seattle
Department of Construction and Inspections

Hearing Examiner File:
MUP-17-001 (W)

Department Reference:
3020845

**NOTICE OF
PREHEARING
CONFERENCE**

The Hearing Examiner Rules (HER 2.0) provide for a prehearing conference with the parties to consider identification, clarification and simplification of the issues, whether the dispute can be resolved through mediation, the disclosure of witnesses and exhibits to be presented at hearing, prehearing motions, and other matters as appropriate for the orderly and expeditious disposition of the proceedings.

A telephonic prehearing conference shall be held in this matter on **Thursday, January 26, 2017 beginning at 10:00 AM.** Each party must have a representative in attendance for this meeting. The Hearing Examiner will place the call to each party's representative. The appellants should be prepared to clarify their appeal issues during the conference.

Entered this 17th day of January 2017.



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Office of Hearing Examiner Mediation Program

The Office of Hearing Examiner (Office) believes that mediation can help parties reach consensual resolution of some cases filed with the Office. Settlement early in the case can provide a cost effective and flexible way to resolve disputes to the satisfaction of all concerned.

Mediation of Hearing Examiner Cases

Mediation is assisted negotiation. It is a voluntary process in which an impartial, neutral party helps the parties negotiate a solution that is acceptable to them. The mediator does not render a decision and has no authority to impose a settlement.

The Office's mediation program uses mediators associated with the Interlocal Conflict Resolution Group (ILCRG). ILCRG's mediators have experience in many subject areas, including land use and environmental matters. These services are provided to the parties at no cost. (The parties may choose, at their own cost, to use a mediator who is not associated with ILCRG.)

The discussions with the mediator are strictly confidential and will not be shared with the examiner assigned to hear a case. If the mediation does not resolve all of the issues in the case, the case will return to the assigned examiner for resolution of the remaining issues through the contested case process.

Selecting Cases

As each case is filed, the Office will make an initial assessment as to whether mediation may be appropriate. A number of factors will guide the Office in making this initial determination. If the Office determines that mediation may be appropriate, an examiner not assigned to hear the case will contact the parties to explore their interest in mediation and answer questions about the process. If a case is not identified by the

Office for possible mediation, parties may jointly or separately approach the Office to request mediation. In any event, whether the Office recommends mediation or a party requests it, mediation is voluntary: All parties must agree to try the process before a mediation session is actually scheduled.

Should the Case be Mediated?

Not all cases are good candidates for mediation. Some may involve issues of such important principle that for some parties, defeat is preferable to compromise. In others, one or another of the parties may be concerned with creating a precedent. Often, one party is concerned with settling the issues while others would prefer the conflict continue. Some basic questions should be addressed when considering the use of mediated negotiations:

- Are you and your organization willing to consider a compromise?
- Do you have room for flexibility?
- Why do you want to end the dispute?
- Has the conflict reached the point where issues have been defined and joined and you know who the interested parties are?
- Do all parties have some reason to bargain? Does each have the ability to frustrate or make prohibitively costly the unilateral actions of the other(s)?
- Is the outcome uncertain?
- Is there some sense of urgency to settle the conflict?
- Do you have the support of your organization to explore possible mediation? Do they understand the implications of such an effort?
- Ask yourself the same questions regarding the other parties.¹

Procedures

The procedures governing each mediation will vary depending upon the circumstances of the case and the complexity of the issues and parties. In most cases the parties will be expected to be represented at the mediation by all persons necessary to reach an agreement. Mediation is presented as an opportunity to resolve as many issues as possible in the case. To accomplish that, each party must bring every person to the mediation who must approve any substantive decision in the litigation, or send persons who are fully authorized to bind the party. Parties will need to consider in advance of the mediation who can best represent them and evaluate the case in some detail.

Most mediations will begin with opening statements by the parties outlining their views of the issues to be discussed and their substantive positions. A combination of joint sessions, and separate meetings between the mediator and one side (caucuses) may follow, until agreement is reached or further efforts appear futile. You may direct questions to the mediator before, during or after a mediation session.

Confidentiality

All discussions at the mediation, including any statement made by any party, attorney, or other participant, are, in all respects, privileged and cannot be reported, recorded, placed in evidence, used for impeachment, made known to the examiner assigned to hear the case or construed for any purpose as an admission. No party can be bound by anything done or said at the conference unless a settlement is reached.

Settlement Agreements

In mediation, parties have greater control of the decision making process and maximum flexibility in developing a resolution addressing all parties' interests. If a settlement is reached, the agreement is reduced to writing and is binding upon all parties to the agreement. Settlement agreements resulting from a mediation will be presented to the examiner assigned to hear the case for approval in connection with dismissal of some or all of the issues in the case. If an agreement violates state law or City Code or policy, it will not be approved, but otherwise the dismissal will be granted.

Benefits

The Office believes that mediation can help parties reach more creative and flexible outcomes than they might achieve in litigation, and at considerably less expense and delay. The mediator will work with the parties to tailor the mediation process to their particular dispute.

¹ Cormick, Gerald W., "Where, When & How to Use Mediated Negotiations: A checklist for the Potential Participant." Canadian Environmental Mediation Newsletter, York University, Toronto, Volume 3, No. 1, 1988, pp. 7-9.

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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 **Notice of Prehearing Conference and Mediation Flyer** to each person listed below, or on the attached mailing list, in the matter of **EPIC et al.** Hearing Examiner File: **MUP-17-001 (W)** in the manner indicated.

Party	Method of Service
Epic et al. c/o Knoll Lowney, Claire Tonry, Meredith Crafton, Katherine Brennan Smith & Lowney PLLC knoll@igc.org clairet@igc.org meredithc@igc.org katherineb@igc.org	<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 Donnelly c/o Courtney Kaylor and Jack McCullough McCullough Hill Leary, P.S. courtney@mhseattle.com jack@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
SDCI c/o Liza Anderson Assistant City Attorney Liza.Anderson@seattle.gov Alicia Reise Alicia.Reise@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: January 17, 2017



 Tiffany Ku
 Legal Assistant