

1 SEATTLE HEARING EXAMINER

2  
3 In the Matter of the Appeal by  
4 LIVABLE PHINNEY,  
a Washington non-profit corporation  
5 from a determination of non-significance,  
6 design review and interpretation

Hearing Examiner File  
MUP-17-009 (DR, W)

MOTION FOR CONTINUANCE OF  
HEARING AND PREHEARING DATES

7  
8 **I. RELIEF REQUESTED**

9 Pursuant to HER 2.16 (motions) and 2.20 (continuance of hearing), Livable  
10 Phinney requests a continuance of the dates for the disclosure of witnesses and  
11 exhibits and for the hearing itself, in order to allow for Livable Phinney's review of the  
12 City's late production and pending production of requested relevant documents.

13  
14 **II. RELEVANT FACTS**

15 SDCI rendered its Analysis and Decision in this matter on January 23, 2017.  
16 Within the applicable 14 day appeal period, Livable Phinney filed both an appeal of the  
17 decision and a request for interpretation. A week later on February 14, 2017, Livable  
18 Phinney requested public records relating to the Decision. On that same day, SDCI  
19 responded that its first installment of documents would be produced a month later, on  
20 March 15, 2017. See Attachment 1 to this Motion.

21  
22 On February 23, 2017, the Examiner held a Pre-Hearing Conference which  
23 established a schedule for prehearing events and hearing dates, including dates for: the  
24 Applicant's motion to dismiss by March 17; responses by April 6; replies by April 14;  
25 witness and exhibit lists by April 25; and a hearing to commence on May 1, 2017 (later

1 changed to May 2, 2017). Some of these dates straddle a long-planned absence by  
2 Appellant's counsel between April 9 and 23, 2017. As well, counsel will be out of the  
3 country (and out of range of most conventional means of communication) between May  
4 11 and 22, 2017.

5         During the Prehearing Conference, SDCI committed to presenting a response to  
6 the code interpretation request by March 30, 2017, roughly seven weeks after the  
7 request was filed. SDCI met its target date, leaving Livable Phinney one remaining  
8 week to address the Applicant's motion, which dealt with vesting issues raised within  
9 the interpretation request. The following day, March 31, 2017, SDCI indicated the  
10 availability of its second installment of documents in response to Livable Phinney's  
11 initial public records request. See Attachment 2. On April 4, 2017 – just two days before  
12 the deadline for Livable Phinney's response to the applicant's motion to dismiss -- SDCI  
13 made those documents available on a flashdrive. They total 228 megabytes and are in  
14 the process of being reviewed. Many of those documents address questions of vesting  
15 addressed in the Applicant's Motion to Dismiss. See for example Attachment 5 to  
16 Appellant's Response to the Applicant's Motion to Dismiss, etc. But on account of the  
17 late production of documents Livable Phinney was compelled to file its response to the  
18 Applicant's motion without having the opportunity to fully review them.

19         On March 30, 2017 (the date of the interpretation), Livable Phinney requested  
20 public records relating to the interpretation. On April 3, 2017, SDCI confirmed receipt of  
21 the request and stated that the first installment of the requested would be produced on  
22 or about May 3, 2017, a day after the commencement of the hearing and a week after  
23  
24  
25

1 the designation of witnesses and exhibits. See Attachment 3 to this motion. SDCI gave  
2 no dates for further installments of produced documents.

3 **III. ARGUMENT**

4 Pursuant to HER 2.20, a hearing may be continued for good cause shown.  
5 Within a week of commencing this appeal, Livable Phinney had requested  
6 documentation relating to the Decision. A flashdrive of the second installment of those  
7 documents was received just two days ago, and is still being reviewed. On the day of its  
8 issuance, Livable Phinney requested documentation relating to the basis for the code  
9 interpretation. However, SDCI has not produced, and will not produce documentation  
10 relating to either its Decision or the code interpretation in sufficient time for Livable  
11 Phinney to review that documentation in designating witnesses and exhibits or in  
12 preparing for the hearing. The late production does not allow Livable Phinney an  
13 opportunity consistent with due process to present its case on appeal. Accordingly,  
14 Livable Phinney asks for a continuation of the prehearing dates and the hearing to allow  
15 it to review documentation relating to the SDCI's Decision and its code interpretation. If  
16 SDCI's processing of Livable Phinney's prior request is any indication, SDCI's further  
17 installment of produced documents may not occur until the middle of May. In view of  
18 counsel's absence in May, Livable Phinney requests a continuance into the middle of  
19 June.  
20  
21

22 Dated this 6<sup>th</sup> day of April, 2017.

23 ARAMBURU & EUSTIS / LLP

24 By 

25 Jeffrey M. Eustis, WSBA #9262

DECLARATION OF SERVICE

I am a partner in the law offices of Aramburu & Eustis, LLP, over eighteen years of age and competent to be a witness herein. On the date below, I served copies of the foregoing document upon parties of record, addressed as follows:

Patrick Downs,  
Assistant City Attorney  
Patrick.Downs@Seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger


David Graves  
City of Seattle Office of Planning and Community Development  
David.Graves3@seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

Michael Dorcy  
City of Seattle Office of Planning and Community Development  
Michael.Dorcy@seattle.gov  
@seattle.gov  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

Jessica Clawson  
jessica@mhseattle.com  
Katie Kendall  
kkendall@mhseattle.com  
Attorneys for the Applicant  
 first class postage prepaid,  
 email  facsimile  
 hand delivery / messenger

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED: April 6, 2017.

  
\_\_\_\_\_  
Jeffrey M. Eustis

# Attachment 1

**Jeff Eustis**

---

**From:** City of Seattle Public Records Request Center <seattle@mycusthelp.net>  
**Sent:** Wednesday, March 15, 2017 2:57 PM  
**To:** eustis@aramburu-eustis.com  
**Subject:** Construction & Inspections :: C009876-021417

--- Please respond above this line ---

03/15/2017

Dear Jeff Eustis,

An installment of records in response to your public disclosure request C009876-021417 received on February 14, 2017 is now available to download. The cost for copies will be as follows:

Online delivery of files under 1 Gigabyte with a \$.02 minimum charge: \$0.02

Staff time to copy/attach a request at \$.41 per minute with a two minute minimum: \$0.82

Staff time to release records to Customer at \$.41 per minute for each increment of 25 attachments.: \$0.41

**Total: \$1.25**

To pay online, please log into the system and locate your request in the 'My Records Request Center.' Selecting the 'Make Payment' button will route you to the City's secure online payment service. *Please note that you will need to disable any popup blockers in order to make a payment using the system.*

Once your payment has been approved, we will send you an email with instructions on how to download them. **Note that the uploading of records is not an automatic process and your access to the records may take 1 - 2 business days after payment.**

Let me know if you are unable to pay online and I will work with you on alternative ways to receive the records.

You have thirty (30) days from today's date to pay for your records. If the City does not receive your payment within this time period, your request will be considered abandoned, and you will need to submit a new request.

Sincerely,

Maxwell Branham  
Public Disclosure Assistant  
Department of Construction and Inspections

# Attachment 2

## Jeff Eustis

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**From:** City of Seattle Public Records Request Center <seattle@mycusthelp.net>  
**Sent:** Friday, March 31, 2017 4:34 PM  
**To:** eustis@aramburu-eustis.com  
**Subject:** Construction & Inspections :: C009876-021417

--- Please respond above this line ---

03/31/2017

Dear Jeff Eustis,

Records in response to your public disclosure request C009876-021417 received on February 14, 2017 are now available to download. The cost for copies will be as follows:

Online delivery of files under 1 Gigabyte with a \$.02 minimum charge: \$0.02

Staff time to copy/attach a request at \$.41 per minute with a two minute minimum: \$0.82

Staff time to release records to Customer at \$.41 per minute for each increment of 25 attachments.: \$0.41

**Total: \$1.25**

To pay online, please log into the system and locate your request in the 'My Records Request Center.' Selecting the 'Make Payment' button will route you to the City's secure online payment service. *Please note that you will need to disable any popup blockers in order to make a payment using the system.*

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Let me know if you are unable to pay online and I will work with you on alternative ways to receive the records.

You have thirty (30) days from today's date to pay for your records. If the City does not receive your payment within this time period, your request will be considered abandoned, and you will need to submit a new request.

Sincerely,

Maxwell Branham  
Public Disclosure Assistant  
Department of Construction and Inspections



# Attachment 3

## Jeff Eustis

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**From:** City of Seattle Public Records Request Center <seattle@mycusthelp.net>  
**Sent:** Monday, April 03, 2017 8:37 AM  
**To:** eustis@aramburu-eustis.com  
**Subject:** Construction & Inspections :: C011657-033017

--- Please respond above this line ---

04/03/2017

Dear Jeff Eustis,

This acknowledges receipt of your public disclosure request C011657-033017 received on March 30, 2017 regarding:

Please produce the following public records relating to Land Use Interpretation No. 17-002 rendered by David Graves on March 30, 2017: all communications (including but not limited to memoranda, email messages, email attachments, meeting notes, and voicemail recordings) by, between, and among David Graves, other city employees and officials, and other persons outside of the City; all other public records reviewed, considered, consulted, or produced by David Graves and/or other DCI employees in rendering the interpretation, including, but not limited to prior drafts and marked-up drafts of the interpretation. These documents are requested in conjunction with a pending appeal and are of immediate need. Thanks for processing this request.

Pursuant to RCW 42.56.520, this is notification that the City of Seattle has received your public disclosure request and needs additional time to respond. At this time, the City anticipates that it will be able to provide the requested records or a first installment of records on or about May 3, 2017.

Sincerely,  
Maxwell Branham  
Public Disclosure Assistant  
Department of Construction and Inspections

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To monitor the progress, update this request, make payments and download your responsive records please log into the [Public Records Request Center](#).

