

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

LIVABLE PHINNEY, ET AL.

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

Hearing Examiner File:

MUP-17-009 (DR, W)

Department Reference:

3020114

**ORDER ON MOTION FOR
CONTINUANCE AND TO
COMPEL DISCOVERY**

On April 6, 2017, Liveable Phinney et. al. (“Appellants”) filed a Motion for Continuance of Hearing and Prehearing Dates. The applicant Johnson & Carr, Inc. (“Applicant”) filed a response to the motion. No response was received from the City of Seattle (“City”).

The motion indicates that the Appellants have submitted a request to the City for documents related to the Director’s Interpretation (“Interpretation”) that is a part of this appeal. The Interpretation was issued on March 30, 2017. The Appellants submitted their request for documents related to the Interpretation on the same date. The City has indicated that it will “provide the requested records or a first installment of records on or about May 3, 2017.” The hearing in this matter is scheduled for May 2 through May 4, thus the documents (perhaps only a first installment) would arrive in the middle of the hearing.

The Applicant objects to the motion on the basis that the Appellants’ request for documents is untimely, should have been disclosed at the prehearing conference, and a continuance could compromise the Applicant’s case as the Applicant’s lead representative will be on parental leave starting in mid-May.

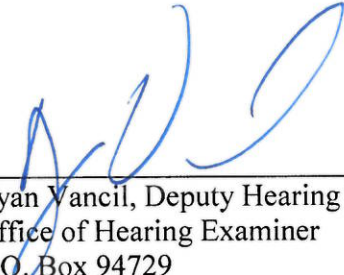
None of the parties identified the need for a discovery schedule at the time of the prehearing conference. Instead the prehearing order indicates “The parties are engaging in prehearing discovery on their own initiative, and will notify the Hearing Examiner only if necessary.” The Appellants’ request for documents was related to the “rendering of the interpretation,” and therefore could not have been submitted in advance of the actual Interpretation. Appellants submitted their request for these documents at the earliest possible time considering the timing of the Interpretation. Appellants’ request clearly indicates “These documents are requested in conjunction with a pending appeal and are of immediate need.” Thus, the City had ample warning that these documents are needed for the hearing in this matter. The Appellants will be prejudiced if they are not provided the requested documents, and are not allowed time to review the documents.

The Applicant’s case may be compromised by an interruption in availability of its primary representative if the hearing is continued. The hearing dates in this matter have been set for over

a month, and the parties have been preparing with those dates in mind. The Hearing Examiner's office has also scheduled other hearings around these dates, and it is too close to the hearing to now utilize the dates for another case.

HER 3.11 provides that "on the Hearing Examiner's own initiative, the Examiner may compel discovery." To avoid prejudice to the Appellants in preparing their case, and inconveniencing the parties, the City is **ORDERED** to respond to Appellants' request for documents received by the City on March 30, 2017 no later than 5 PM Tuesday April 25, 2017. The Appellants' motion for continuance is **DENIED**.

Entered this 14th day of April 2017.



Ryan Vancil, Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
FAX: (206) 684-0536

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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 **Order on Motion for Continuance and to Compel Discovery** to each person listed below, or on the attached mailing list, in the matter of **Livable Phinney**. Hearing Examiner File: **MUP-17-009 (DR, W)**, in the manner indicated.

Party	Method of Service
Livable Phinney c/o Jeff Eustis Aramburu & Eustis LLP eustis@aramburu-eustis.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
Applicant c/o Jessica Clawson and Katie Kendall McCullough Hill Leary, P.S. jessica@mhseattle.com 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
SDCI c/o Patrick Downs Assistant City Attorney Patrick.Downs@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: April 18, 2017



 Tiffany Ku
 Legal Assistant