

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)

APPELLANT'S MOTION TO RE-OPEN
HEARING RECORD

7
8 **I. RELIEF REQUESTED**

9 Pursuant to HER 2.20, Livable Phinney requests that the hearing record be re-
10 opened to include an Addendum prepared by Dr. Roberto Altschul to his Analysis of
11 Headway Data that was admitted as Exhibit 18. This Addendum and the spreadsheet
12 provided by Metro are being offered now because the current headway data for Bus
13 Route #5 was not made available to Dr. Altschul until last Thursday, June 15, 2017.

14
15 **II. RELEVANT FACTS**

16 At the appeal hearing, Dr. Altschul presented an analysis that actual headways
17 on Route #5 did not meet the 15 minute minimum required for frequent transit service
18 (as defined by SMC 23.84A.038). David Graves, the SDCI staff member who rendered
19 the code interpretation, conceded as much.¹ But then Mr. Graves contended that a new
20 schedule issued in March 2017 showed increased service and that that would meet the
21 requirement for frequent transit service, even though no actual data of actual headways
22 under the new schedule was then available.

23
24
25 ¹ Examiner's recording of Graves testimony on Day 3, tape 2 at 42 minutes, 37 seconds and at 46
minutes, 56 seconds.

1 Following the hearing Dr. Altschul requested from Metro data of actual headways
2 under the March 2017 schedule. As reported in his Addendum, that data was not made
3 available to him until June 15, 2017, over two months after it was requested. On the
4 date of this motion, Livable Phinney received from Dr. Altschul the attached Addendum
5 to his prior analysis as well as a copy of the data on which it is based, both of which are
6 submitted with this motion.

7 III. ARGUMENT

8 Hearing Examiner Rule 2.20(d) allows the Examiner to “reopen the record and/or
9 the hearing for good cause... .” Here, good cause exists for the Examiner to re-open the
10 record for consideration of Dr. Altschul’s Addendum because: 1) the Addendum shows
11 that the current schedule produces actual headways no more frequent than the prior
12 schedule, which SDCI conceded would not meet frequent transit service; 2) the
13 Addendum is based upon empirical data, whereas SDCI’s code interpretation was
14 based on mere conjecture that adding two more morning buses would bring actual
15 headways up to the minimum 15 minutes; 3) the Addendum shows that “actual service
16 diverges so much and so consistently from the schedules that service headways do not
17 occur within the specified intervals for the specified time periods[,]” as would be
18 admissible under the prior Fremont Neighbors decision;² and 4) the Addendum was
19 produced as expeditiously as possible, as it was based upon a request made of Metro
20 at the close of the hearing, the Addendum was prepared within days of receipt of the
21 data, and this request is being made upon receipt of the Addendum. For each of these
22
23
24
25

² Ex. 78, Findings and Decision in MUP 14-022(W) at Conclusion 11 (April 15, 2015).

1 reasons the record should be re-opened to receive Dr. Altschul's Addendum to his
2 Analysis of Headway Data.

3 Dated this 19th day of June, 2017.

4 ARAMBURU & EUSTIS, LLP

5
6 By 

7 Jeffrey M. Eustis, WSBA #9262

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

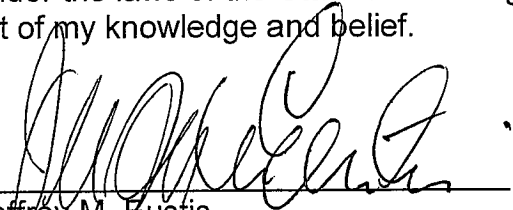
David Graves
City of Seattle Office of Planning and Community Development
David.Graves3@seattle.gov
 first class postage prepaid,
 email facsimile
 hand delivery / messenger

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: Sept 19, 2017.



Jeffrey M. Eustis