

**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 TO  
REOPEN RECORD**

The Appellant Livable Phinney et. al. (“Appellants”) has submitted a Motion to Reopen the Record (“Motion”). Johnson & Carr, Inc., the Applicant (“Applicant”), has filed a response in opposition to the Motion. Oral argument on the motion was heard June 27, 2017, wherein the City of Seattle (“City”) joined the Applicant in opposition to the Motion. The Hearing Examiner has reviewed the file in this matter including the motion documents.

The Appellants request to reopen the record to allow the inclusion of an Addendum prepared by its witness Dr. Roberto Altschul to his Analysis of Headway Data admitted to the record as Exhibit 18. The Applicant and City oppose the Motion, on the grounds that reopening the record will prejudice the Applicant with further delay in the hearing proceedings, and relevance of the material offered in the Addendum.

The Hearing Examiner Rules of Practice and Procedure (“HE Rule”) provide the following with regard to reopening the record for a hearing after it has been closed:

Following the close of the hearing and/or the record, but prior to issuing a decision or recommendation, the Examiner may reopen the record and/or the hearing for good cause and may permit or require written briefs or oral argument.

HE Rule 2.20.c.

As noted by the Applicant, the Appellants failed to communicate the need to keep the record open for this additional information at the hearing, and did not communicate any potential need to reopen the record at the time the information was requested of King County by Dr. Altschul, or when Appellants filed their closing arguments. While not specifically called for by the HE Rules, such communications are within the expectations of professional courtesy, and the need for counsel to actively support judicial efficiency. The failure to provide this early communication would be grounds to deny the motion, in particular where it might also have resulted in delay of a decision. However, in this case a decision will not be delayed by granting the motion, because of existing delays already caused by the Hearing Examiner’s case schedule.

The information presented in the Addendum was not available at the time of the hearing, and is material to arguments raised by the Appellants. The Hearing Examiner understands that the Applicant and City have arguments in opposition to the validity of the Appellants' arguments concerning headway data. However, these arguments go to the merits of the Appellants' argument concerning headway data, and do not address the Addendum's evidentiary relevance to that argument.

In the interest of ensuring that the issues presented by the Appellants are given full consideration on the basis of an adequate record, the Motion is **GRANTED**.

The Addendum will be added to the record as Exhibit 84. The Applicant and City may file responsive materials and/or comments to the Addendum by Monday July 10, 2017.

Entered this 29<sup>th</sup> day of June 2017.



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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 to Reopen Record** 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), S-17-002**, 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 Katie Kendall McCullough Hill Leary, P.S. 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
Patrick Downs Assistant City Attorney Patrick.Downs@seattle.gov  Michael Dorcy SDCI Michael.Dorcy@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: June 29, 2017

  
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 Tiffany Ku  
 Legal Assistant