

Description

Minutes for W-17-004, Day 5
The Ballard Coalition
Friday, December 1, 2017

Time: 8:30 a.m.
Examiner: Ryan Vancil
Assistant: Michele D'Alessandro

Party Representatives:

Pat Schneider, Josh Brower, and Danielle Granatt, for Appellant

Erin Ferguson and Tadas Kiselius, for Department

Matthew Cohen, for Intervenor

Date

12/1/2017

Location

Large Hearing Room

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
8:32:05 AM		Hearing Examiner opens hearing.
8:32:22 AM		Kiselius notes a witness is sick and unavailable will testify on Tuesday.
8:32:59 AM		Hearing Examiner reminded Witness Bill Schultheiss he is stil under oath
8:33:14 AM		Kiselius continued questioning the witness. Directed to turn to staff 32.
8:35:11 AM		R30 is admitted into the record (Bicycle Saftey - Tab 32)
8:37:43 AM		Kiselius asks witness about 2 way side paths
8:39:19 AM		Discussion on contraflow continues (either side of the street vs. 2 way on one side).
8:41:10 AM		Kiselius asks witness to elaborate on contraflow.
8:44:28 AM		Kiselius refers to tab 32. R32 is submitted.
8:46:47 AM		R32 is admitted.
8:46:58 AM		Kiselius asks witness to talk about conflict diagram (attachment 2).
8:49:43 AM		Kiselius asks if there is anything missing from the analysis.
8:53:28 AM		Kiselius asks witness about selecting design vehicles.
8:54:59 AM		Kiselius asks if there was adequate design to assess transoportaiton safety issues, conflicts between motorized and non-motorized vehicles. Witness reponse is yes to both questions.
8:56:37 AM		Kiselius ends questioning of witness.
8:56:55 AM		Brower begins questioning witness.
8:57:35 AM		Brower asks witness if he has worked on a WA State SEPA.
8:59:11 AM		Brower asks witness to open package. Package contains deposition. Asked to turn to page 28. Review lines 24-28
9:00:05 AM		Kiselius objects to question.
9:01:54 AM		Cohen objects to Brower's line of questioning. HE allows witness to finish asnwering the question.
9:04:46 AM		Brower continues questioning witness about his process when assessing EIS.
9:07:33 AM		Witness responds to Brower's question about advocacy.
9:08:57 AM		Brower asks witness if he has published any studies, research papers. Witness responds no.
9:09:47 AM		Brower asks if humans can operate cars safely.
9:11:05 AM		Brower asks witness if he has been on twitter since the trial.
9:11:33 AM		Kiselius objects to Brower's questioning of twitter feed.
9:12:28 AM		Hearing Examiner says the fact that the information is on twitter does not render it irrelevant.
9:12:58 AM		Kiselius withdraws his objection.
9:13:26 AM		Brower refers to witness's tweet of November 22.
9:17:15 AM		Review of video witness bicycling in street.
9:18:05 AM		Brower asks if witness stopped at stop sign. Witness responds yes.

9:21:07 AM	Brower asks witness if he has designed bike trails that cross industrial driveways found in Shilshole.
9:21:43 AM	Witness says he has not designed bike trails.
9:21:55 AM	Kiselius objects that witness cannot testify to Brooklyn work.
9:22:39 AM	Question is withdrawn. Brower asks what is the scope of non-disclosure (found on page 43 of deposition)
9:23:27 AM	Witness responds that his presence on project is not to be made public.
9:24:06 AM	Brower asks about Orlando study.
9:24:41 AM	Brower indicates that they will look at Volume 1 of Apellant's notebook (A81). Is marked as Exhibit A21.
9:26:35 AM	Brower asks to review Exhibit R32 (Tab 30, page 2, COS 00588).
9:28:59 AM	Brower asks witness if he read the whole of the EIS with focus on risk of side paths.
9:31:54 AM	Brower asks to review page 593 in Exhibit R32 (Trail markings). Brower rephrases question.
9:35:44 AM	Review of Exhibit R13, page 5-8 COS 000250.
9:38:38 AM	Discussion of contraflow.
9:38:59 AM	Brower concludes questioning.
9:39:09 AM	Re-direct (Kiselius). He asks if witness believes existing conditions are a better choice than the preferred alternative. Re-phrase: which is the better choice.
9:40:22 AM	Kiselius refers to Tab 30 - Exhibit R32 (crashes and road factors).
9:43:11 AM	Witness comments on the efficacy of treatments.
9:45:27 AM	Kiselius refers to Tab 17 Exhibit R13 pages 5-8, 5-9
9:47:02 AM	Kiselius concludes questioning.
9:47:20 AM	Brower moves to question the witness.
9:47:29 AM	Kiselius objects. The witness is not subject to requestioning based on his status.
9:48:19 AM	DH asks witness what service does the green paint perform.? Witness responds, to increase safety. DH asks if the there are studies to this effect part of the record?
9:50:22 AM	Mr. Schultheiss is excused.
9:50:51 AM	Ferguson calls Morgan Shook.
9:51:14 AM	DH swears in Mr. Shook. Mr. Shook details his academic and professional pedigrees.
9:53:42 AM	Mr. Shook's resume is entered into the record as R33.
9:54:40 AM	Mr. Shook describes his role in this project (impact to local businesses, economic consideration analysis).
9:55:56 AM	Methodology is discussed. Hedonic model is discussed.
10:03:42 AM	Mr. Shook is asked if he agrees with Mr. Cohen's critique. Mr. Shook states he does not agree with Mr. Cohen's critique. Mr. Shook is asked to describe "fitness."
10:08:37 AM	Water dependent use is discussed as a variable.
10:10:43 AM	General changes to draft economic report are discussed. 2 reasons table not included: accessibility and precision.

10:12:41 AM	Review of Exhibit A15 A350.64.
10:14:23 AM	Schneider objects to Ferguson's question (leading)
10:16:55 AM	Mr. Shook states he made changes to the final document after discussion with SDOT but not at their request.
10:18:51 AM	Mr. Shook states that financial impact, cost benefit analysis, broader macro economic analysis -- these three analyses are not required in SEPA review.
10:24:21 AM	Exhibit A17 is reviewed (page 46).
10:28:37 AM	Mr. Shook is asked if report reflects economic factors. Mr. Shook responds affirmatively.
10:29:23 AM	Break until 10:45AM.
10:45:56 AM	Hearing is reconvened.
10:47:20 AM	Mr. Cohen questions Mr. Shook.
10:49:05 AM	Ms. Ferguson asks for full draft EIS to be admitted.
10:50:48 AM	DH admits Exhibits R33, R34, and nto the record. A7-A10 have already been admitted into the record (Ballard Coalition Videos - A7-A8-A9-A10).
10:53:14 AM	Ms. Ferguson concludes questioning.
10:53:24 AM	Mr. Schneider questions Mr. Shook about how delays will impact businesses.
10:56:39 AM	Next statement

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
11:17:26 AM		Hearing Reconvenes. Mr. Schneider continues questioning Mr. Shook.
11:19:30 AM		Mr. Schenider asks Mr. Shook about specifics in the Hedonics section of the report.
11:21:05 AM		Testimony on Page C7 (Hedonic Analysis of Industrial Properties).
11:21:29 AM		Mr. Schiender asks Mr. Shook how he conducted the analysis.
11:25:28 AM		Mr. Shook continues his testimony.
11:27:48 AM		Mr. Schneider asks what other quantified information has Mr. Shook contributed to the report.
11:28:12 AM		Ms. Ferguson objects to line of questioning. The DH allows questioning as a summary.
11:28:37 AM		Hearing Examiner asks if Exhibit A17 is being reviewed. Mr. Shook confirms Exhibit A17 is being reviewed.
11:31:22 AM		Hearing Examiner asks for consistency in referring to documents under discussion.
11:33:03 AM		Operational Impacts are reviewed.
11:33:53 AM		Mr. Schneider asks Mr. Shook to confine his answer to yes or no.
11:34:18 AM		Mr. Shook responds no.
11:34:18 AM		Mr. Schneider asks if they are on page 4-7.
11:34:18 AM		Mr. Shook continues to read from page 4-7.
11:34:18 AM		Mr. Schneider asks if there is anything else from the preferred alternative he would learn as a business owner.
11:34:18 AM		Mr. Schneider asks what Mr. Shook has contributed as an economist.
11:39:33 AM		Mr. Shook continues testimony.
11:40:02 AM		Mr. Schneider asks to review Exhibit A-15.
11:41:40 AM		Mr. Shook is asked to open a sealed copy of deposition.
11:42:17 AM		Mr. Schneider asks Mr. Shook to read from page 57 of the deposition.
11:43:16 AM		Hearing Examiner asks where in the draft EIS the finding of significance is reflected.
11:43:48 AM		Mr. Brower clarifies it is in Exhibit A15, Volume 9, page 415 second paragraph.
11:44:59 AM		Mr. Shook states this was not in the final report because of precision.
11:48:12 AM		Hearing Examiner continues to question Mr. Shook asking what led him to the conclusions in the draft EIS.
11:49:42 AM		Mr. Shook states delay, not hedonics analysis, and safety.
11:51:30 AM		Hearing Examiner asks Mr. Shook to point to EIS possibility that a single business may close.
11:52:32 AM		It is clarified that the possibility of that harm is not in the final EIS. It is in the report in Chapter 4, page 4-1.
11:54:18 AM		Hearing Examiner thanks Mr. Shook for the clarification.
11:54:30 AM		Ms. Ferguson continues questioning Mr. Shook.
11:55:37 AM		Ms. Ferguson concludes questioning.
11:56:22 AM		Hearing Examiner asks Mr. Schneider if he has further questions.

11:56:53 AM	Mr. Shook is dismissed.
11:58:02 AM	Break for lunch.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
1:16:13 PM		Hearing is readjourned
1:16:26 PM		City calls Mark Mazzola.
1:16:37 PM		Mr. Mazzola is sworn in. Mr. Mazzola describes his position with SDOT.
1:17:52 PM		Kiselius asks Mr. Mazzola about his expertise relative to the case.
1:20:20 PM		Kiselius asks Mr. Mazzola asks if he has been involved in preparing EIS's like this case.
1:20:52 PM		Mr. Mazzola lists the EIS cases he has been involved with. He was the City's environmental lead on those projects. He has also evaluated non-EIS projects over the last 10 years.
1:22:44 PM		Kiselius asks about how Mr. Mazzola worked with consultants hired for this particular EIS.
1:25:47 PM		Exhibit R35 is admitted into the record (Mazzola resume).
1:27:37 PM		Kiselius asks if existing conditions of the trail informed the EIS. Mr. Mazzola responds affirmatively.
1:28:50 PM		Kiselius submits COS Pedestrian Master Plan - Exhibit R36 (with Appendices)
1:31:08 PM		Kiselius proposes to return on Tuesday with a color rendition of the COS Pedestrian Plan
1:31:24 PM		Exhibit R36 is admitted into the record.
1:37:10 PM		Kiselius continues to question Mr. Mazzola about his role as lead in the project.
1:37:45 PM		Kiselius asks about SDOT's allegedly not reaching out to coalitions.
1:38:25 PM		Mr. Mazzola said SDOT did reach out to existing coalitions at the time and incorporated their input into the report.
1:39:03 PM		Kiselius asks about rail and rail operation. Kiselius points to Exhibit R10.
1:41:41 PM		Kiselius asks Mr. Mazzola about his understanding about the third line (E/SE location - Salmon Bay Cafe).
1:42:52 PM		Mr. Mazzola clarifies that it is at the 20th Ave W. location.
1:43:24 PM		Kiselius asks Mr. Mazzola to describe current conditions.
1:44:37 PM		Review of Exhibit R1 (7-36)
1:47:39 PM		Kiselius asks Mr. Mazzola if methods used on this EIS are standard. Mr. Mazzola said yes.
1:48:11 PM		Schneider begins questioning of Mr. Mazzola.
1:48:32 PM		Kiselius objects to Schneider's question (relevance).
1:49:38 PM		Hearing Examiner asks Schneider to expand on his thinking regarding line of questioning.
1:50:30 PM		Hearing Examiner states that he does not want to continue down a path of cross examination with regard to compliance.
1:53:48 PM		Schneider asks Mazzola to describe the Promenade (Waterfront Project)
1:58:57 PM		Schneider continues questioning Mazzola (10% of design).
1:59:34 PM		Schneider asks when the draft EIS was published. Mr. Mazzola states June of July 2016.

1:59:57 PM	Schneider asks when the final was published. Mr. Mazzola states 2017.
2:00:34 PM	Schneider asks when the preferred alternative was determined.
2:01:20 PM	Hearing Examiner asks Mr. Schneider to restate the question.
2:01:52 PM	Kiselius objects to the question of timing by Mazzola.
2:01:58 PM	Hearing Examiner asks to review the appeal to make a determination regarding deference.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
2:08:19 PM		Continued Testimony
2:08:51 PM		Hearing Examiner resumes Hearing.
2:09:19 PM		Hearing Examiner pursues clarification of Schneider's cross-examination
2:10:17 PM		Kisellius: nature of objection pursuing informaiton to advances of the design. outside of scope of appeal
2:10:49 PM		Schneider asks Mazzola the decision was made in early March; FEIS published May 25 2017.
2:13:44 PM		Schenider asks SDOT engaged the consultant firm _____ PRTP immediatley after decision.
2:14:59 PM		Mr. Mazzola says consultant was hired in March 2017.
2:15:32 PM		Schneider asks if they were hired before the final EIS was published. Mr. Mazzola says yes.
2:16:34 PM		Schneider distributes CIPA City Regulations
2:16:45 PM		Kisellius objects to line of questioning (not raised as part of the appeal).
2:18:59 PM		DH asks for clarification about the deference standard.
2:20:22 PM		Schneider responds. Decision was made before FEIS was fnal.
2:21:03 PM		DH asks when Schneider became of this as an issue.
2:21:16 PM		Schneider responds over a month ago when he contacted Mazzola
2:21:31 PM		DH asks if there was a motion to modify?
2:22:10 PM		Schneider responds no.
2:22:21 PM		DH says a month's time was available. DH says he will not allow new information.
2:24:41 PM		DH states the issue remains if the department has not met the requirements of CIPA (deference).
2:25:53 PM		Cohen says the EIS is defective - how do you look at the City's pattern of behavior.
2:26:16 PM		Brower offers information in amended appeal (June 8, 2017).
2:28:22 PM		Kisellius comments on motion to dismiss.
2:28:42 PM		Brower says just the DAC.
2:29:36 PM		DH says he will allow questioning for purposes of appeal.
2:30:28 PM		Schneider asks if that means that he will not treat it as part of the record for deference.
2:31:05 PM		DH Vancil says that will be left for rebuttal and will defer rulling on objection. It will be treated as a standing objection.
2:34:16 PM		Kisellius says the City will not be waiving its objection to the line of questioning.
2:34:39 PM		Schneider continues line of questioning.
2:35:27 PM		Schneider asks Mazzola to read sections A 1-2.
2:40:02 PM		Schneider asks at what level are the designs currently. Mazzola responds 90%.
2:40:46 PM		Schneider withdraws question.
2:42:36 PM		Discussion about \$4.8MM.

2:42:57 PM	Kiselius objects to questioning about past history; not relevant to case in front of HE.
2:44:57 PM	Schneider says the line of questioning is related to deference.
2:45:47 PM	Kiselius says he does not think the line of questioning is not related to deference and unrelated to the appeal.
2:46:39 PM	DH Vancil sustains the objection about the money spent previously.
2:48:21 PM	Schneider asks Mazzola if anyone has read the final EIS since deposition.
2:49:13 PM	Mazzola responds he cannot say the extent to which the EIS has been read post publication by city colleagues.
2:52:39 PM	Mazzola states the department's intent is to proceed with the project (preferred alternative).
2:55:57 PM	Discussion about future roll-out of the project.
2:57:43 PM	Schneider asks to look at FEIS - Exhibit R1. Addresses construction to begin in 2018.
3:00:26 PM	Break - back at 3:15.

<u>Time</u>	<u>Speake</u>	<u>Note</u>
3:01:01 PM		Continuance following Break at 3:00PM
3:16:00 PM		Hearing is reconvened.
3:16:10 PM		Mr. Mazzola reads from R1 FS-111.
3:18:37 PM		Kiseliu objects to Schneider's line of questioning.
3:19:29 PM		Schneider responds that there isn't anything objectionable based on prior deposition.
3:20:31 PM		Hearing Examiner says he will allow line of questioning and not reverse earlier ruling.
3:21:32 PM		Mr. Mazzola continues reading from Exhibit R1.
3:22:50 PM		Cohen objects stating Schneider is asking Mr. Mazzola what he thinks this question means.
3:24:34 PM		Hearing Examiner reverses statement of sustainment.
3:26:45 PM		Mazzola agrees that at the time of his deposition the decision had been made.
3:27:17 PM		Schneider asks if he was mistaken. Mazzola says yes, given the possibility of a new decision point with the new administration.
3:28:32 PM		Exhibit A22: Comment Spread Sheet on Economic Report to Support EIS is submitted.
3:31:56 PM		Schneider asks who was Ron Sharp. Mazzola says one of the original project managers on BG Trail.
3:32:41 PM		Schneider asks Mazzola to read Sharp's comments. Mr. Mazzola says his response is not in response to Sharp's comments.
3:34:15 PM		Mazzola continues to read from Exhibit A22.
3:34:47 PM		Schneider asks about the change of language "damages" to "impacts."
3:35:19 PM		Mazzola responds it is a matter of standard characterization and terminology.
3:37:40 PM		Mazzola reads Comment 164 aloud.
3:39:17 PM		Mazzola reads Comment 175 aloud.
3:42:33 PM		Mazzola concurs that Mr. Shook's report used the word "significant" significantly in various contexts.
3:45:47 PM		Schneider asks where in the Discipline Report is there analysis or data that supports the assertion of safety.
3:46:27 PM		Testimony continues.
3:58:46 PM		Schneider continues questioning of Mr. Mazzola.
3:59:57 PM		Question: why considering an elevated alternative is too expensive. Mr. Mazzola says yes, they did not consider this alternative. Is an EIS supposed to be a cost benefit analysis?
4:01:23 PM		Mr. Mazzola says no.
4:04:08 PM		Schneider rephrases a question posed to Mr. Mazzola regarding whether readers of the EIS considered...
4:05:09 PM		Schneider is asked to rephrase question related to contraflow studies. Did SDOT think about including safety implications of the decision for readers.

4:06:24 PM	Mr. Mazzola responds no.
4:07:46 PM	Exhibits A22 and A23 are admitted into the record.
4:08:29 PM	Kiselius redirects. Asks Mazzola how long he was project manager.
4:09:50 PM	Kiselius asks Mazzola to describe what he worked on as project manager. Mazzola responds the development of the EIS.
4:12:02 PM	Mazzola questioning concludes
4:12:16 PM	Cohen asks if they can adjourn today and regroup on Tuesday morning.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
4:15:26 PM		Hearing Break
4:20:42 PM		Hearing is resumed.
4:21:10 PM		Blake Trask is sworn in.
4:21:21 PM		Cohen begins questioning Mr. Trask.
4:21:41 PM		Mr. Trask reads his academic and professional pedigree into the record.
4:24:59 PM		Mr. Trask continues describing committees he has participated on. He has extensive experience with bicycle projects and safety issues.
4:25:55 PM		Coehn asks Trask if he is familiar with the Missing Link Project.
4:26:17 PM		Mr. Trask says yes.
4:27:19 PM		Cohen asks if Trask has walked the vicinity. Trask responds yes on several occasions. He has biked the area countless times.
4:29:20 PM		Trask has documented safety conditions in the area.
4:30:46 PM		CBC Photo is submitted as Exhibit R37.
4:31:38 PM		Mr. Trask describes the "door zone."
4:32:45 PM		CBC 6 is submitted as Exhibit R38.
4:34:49 PM		Brower objects that the photos are not the same day.
4:36:20 PM		CBC 7 is submitted as Exhibit R39.
4:38:36 PM		Brower objects to questioning.
4:39:06 PM		CBC 7 shows bicyclist riding at an oblique angle.
4:39:59 PM		CBC 13 is submitted as Exhibit R40 car is in the westbound bicycle lane.
4:40:57 PM		CBC 8 is submitted as Exhibit R41.
4:41:45 PM		CBC 10 is submitted as Exhibit R42.
4:42:57 PM		CBC 11 is submitted as Exhibit R43.
4:43:58 PM		CBC 12 is submitted as R44.
4:45:21 PM		Exhibits R37-R44 are admitted.
4:46:27 PM		Start at 9:00AM on 12/2.
4:47:10 PM		Hearing is adjourned.