

**Description**

Minutes for W-17-004, Day 6  
The Ballard Coalition  
Tuesday, December 5, 2017

Time: 9:00 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**

12/5/2017

**Location**

Large Hearing Room

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">9:00:52 AM</a>		Hearing Examiner calls hearing to order.
<a href="#">9:01:26 AM</a>		Hearing Examiner describes reconsidering motion on objection day 3 part 5 of recording 51.48. Objection sustained.
<a href="#">9:03:58 AM</a>		Hearing Examiner discusses line of question by appellant regarding City action. DHE overrules objection.
<a href="#">9:06:32 AM</a>		Kiselius submits replacement of exhibit with colored version. R36 is resubmitted.
<a href="#">9:10:00 AM</a>		Kiselius discussion of cross-driveways. Schneider requests it is made an exhibit.
<a href="#">9:11:15 AM</a>		Replacements for A3 are submitted.
<a href="#">9:11:57 AM</a>		Mr. Trask testifies. Review of CBC-14 - submitted as R-45. CBC 15 is submitted as R46
<a href="#">9:13:56 AM</a>		Mr. Trask continues testimony.
<a href="#">9:17:28 AM</a>		CBC-16 submitted as R47.
<a href="#">9:19:03 AM</a>		Brower objects to Mr. Trask's testimony
<a href="#">9:19:27 AM</a>		Objection sustained.
<a href="#">9:19:59 AM</a>		Brower objects to rephrased question.
<a href="#">9:20:30 AM</a>		Objection is withdrawn.
<a href="#">9:21:02 AM</a>		CBC-17 is submitted as R48.
<a href="#">9:22:27 AM</a>		Cohen submits video. R45-R48 are admitted. Video is submitted as R49 (flash-drive).
<a href="#">9:27:06 AM</a>		Mr. Trask continues testimony related to the video R49 describing safety issues.
<a href="#">9:28:30 AM</a>		R49 is admitted.
<a href="#">9:28:44 AM</a>		Cohen asks Mr. Trask to describe his experience of the missing link from the cab of a truck.
<a href="#">9:30:09 AM</a>		Brower objects to Mr. Trask line of testimony. Asks for yes or no responses.
<a href="#">9:30:36 AM</a>		Objection is sustained.
<a href="#">9:30:52 AM</a>		Cohen rephrases question.
<a href="#">9:33:50 AM</a>		Cohen asks Mr. Trask his opinion about bicycle path design.
<a href="#">9:35:29 AM</a>		Brower objects to line of questioning regarding lack of professional opinion around safety and design.
<a href="#">9:36:10 AM</a>		Cohen expands on his reason for line of questioning.
<a href="#">9:36:46 AM</a>		Objection is overruled. Testimony is confined to lay opinion.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">9:39:39 AM</a>		Mr. Trask continues his testimony.
<a href="#">9:41:40 AM</a>		Mr. Trask confirms his opinion that the preferred alternative is the safest.
<a href="#">9:42:59 AM</a>		Mr. Trask notes the preferred alternative is not part of the EIS.
<a href="#">9:43:47 AM</a>		Brower objects as to relevance of line of testimony and EIS.
<a href="#">9:44:13 AM</a>		Cohen disagrees.
<a href="#">9:45:44 AM</a>		Objection is sustained.
<a href="#">9:46:32 AM</a>		Cohen ends questioning.
<a href="#">9:46:43 AM</a>		Brower begins questioning Mr. Trask.
<a href="#">9:47:15 AM</a>		Cohen objects to Brower's tenor of questioning.
<a href="#">9:47:41 AM</a>		Brower rephrases question regarding definition of "planner."
<a href="#">9:49:43 AM</a>		Brower asks Mr. Trask if he knows Brock Howell at Cascade.
<a href="#">9:51:38 AM</a>		Brower asks Mr. Trask to refer to jogger in Exhibit R48.
<a href="#">9:52:25 AM</a>		Brower asks Mr. Trask if creating a multi-use trail will invite vulnerable users into the environment.
<a href="#">9:55:14 AM</a>		Mr. Trask continues testimony.
<a href="#">9:59:17 AM</a>		Brower rephrases question.
<a href="#">9:59:33 AM</a>		Brower ends questioning of Mr. Trask.
<a href="#">9:59:50 AM</a>		Cohen redirects (implementation of multi-use trail).
<a href="#">10:01:25 AM</a>		Brower resumes questioning Mr. Trask.
<a href="#">10:02:00 AM</a>		Cohen asks for clarification.
<a href="#">10:02:30 AM</a>		DHE Vancil says this is redirect.
<a href="#">10:03:19 AM</a>		Brower states he does not have any further questions.
<a href="#">10:03:38 AM</a>		Mr. Trask is excused.
<a href="#">10:03:46 AM</a>		Hearing Examiner swears in Mr. Dong Ho Chang.
<a href="#">10:04:50 AM</a>		Kiselius asks Mr. Chang to describe his professional background.
<a href="#">10:07:02 AM</a>		Mr. Chang describes his academic and professional background.
<a href="#">10:07:30 AM</a>		Kiselius asks Mr. Chang his experience with non-motorized transportation
<a href="#">10:07:53 AM</a>		Mr. Chang responds almost on a daily basis.
<a href="#">10:09:30 AM</a>		Mr. Chang describes projects he has worked on with both the City of Seattle and Everett.
<a href="#">10:11:54 AM</a>		Mr. Chang describes projects he has worked on with the City of Seattle.
<a href="#">10:12:44 AM</a>		Mr. Chang is asked if he has a role in drafting, reviewing or commenting on national guidance guidelines. Mr. Chang responds he is a voting member of this delegation.
<a href="#">10:14:20 AM</a>		Mr. Chang's resume is admitted as R50.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">10:15:57 AM</a>		Mr. Chang continues his testimony.
<a href="#">10:16:36 AM</a>		Mr. Chang is asked to describe street arterials in the EIS.
<a href="#">10:17:36 AM</a>		Mr. Chang responds to question on Exhibit R7
<a href="#">10:19:31 AM</a>		Kiselius asks Mr. Chang is the City has design standrds for major truck streets.
<a href="#">10:19:54 AM</a>		Kiselius asks Mr Chang if the Freight Master Plan applies to streets.
<a href="#">10:20:45 AM</a>		Mr. Chang is asked what it means to "accommodate"
<a href="#">10:21:13 AM</a>		Page 24 of R7 is reviewed. Mr. Chang is asked to read "as described in the TSP."
<a href="#">10:23:04 AM</a>		Page 79 of R7 is reviewed.
<a href="#">10:24:14 AM</a>		Page 82 of R7 is reviewed.
<a href="#">10:27:02 AM</a>		Freight Master Plan - Tab 9 is submitted as R51
<a href="#">10:28:24 AM</a>		Schneider asks for clarification of the document under reivew and date of adoption.
<a href="#">10:30:01 AM</a>		Schneider observes this is a newly-adopted version. Withdraws objection but date of adoption needs to be part of the record. The date of adoption is December 1, 2017.
<a href="#">10:30:42 AM</a>		Exhibit R51 is admitted.
<a href="#">10:31:55 AM</a>		Kiselius asks Mr. Chang to review a document in A1 Figure 61A.
<a href="#">10:33:26 AM</a>		Mr. Chang confirms 13D and 13E are owned by the City. Mr. Chang confirms auto-turn.
<a href="#">10:34:46 AM</a>		Break
<a href="#">10:50:55 AM</a>		Hearing is resumed.
<a href="#">10:51:04 AM</a>		A6 is reviewed. Mr. Chang describes action in A6.
<a href="#">10:52:26 AM</a>		Mr. Chang confirms rules of the road are adequate as depicted.
<a href="#">10:53:39 AM</a>		Review of Tab 10 COS...165
<a href="#">10:54:57 AM</a>		R51 and R52 are admitted into the record.
<a href="#">10:55:41 AM</a>		R53 is submitted.Precursor to Street Illustrated (section 4.2)

<b>Time</b>	<b>Speaker</b>	<b>Note</b>
<a href="#">11:00:32 AM</a>		Hearing Resumes.
<a href="#">11:00:48 AM</a>		Design of Preferred alternative is discussed (lane offsets).
<a href="#">11:01:55 AM</a>		Mr. Chang continues testimony.
<a href="#">11:03:31 AM</a>		Kiselius asks Mr. Chang if speed is a factor.
<a href="#">11:04:04 AM</a>		Offsets used in Magnolia (Dravus and Gilman Aves.).
<a href="#">11:06:39 AM</a>		Kiselius asks Mr. Chang about rail operation along Shilshole.
<a href="#">11:09:33 AM</a>		Mr. Chang continues testimony.
<a href="#">11:10:35 AM</a>		Schneider questions Mr. Chang.
<a href="#">11:12:08 AM</a>		Mr. Chang is asked about the number of EIS's he has been involved in with SDOT.
<a href="#">11:13:35 AM</a>		Mr. Chang is asked his understanding and purpose of EIS.
<a href="#">11:14:49 AM</a>		Schneider asks who made the decision to include studies in EIS.
<a href="#">11:15:32 AM</a>		Mr. Chang says the team and himself as part of review.
<a href="#">11:16:06 AM</a>		Mr. Schneider asks if the decision not to disclose consistent with EIS.
<a href="#">11:16:28 AM</a>		Mr. Chang asks for clarification.
<a href="#">11:16:40 AM</a>		R53 - Right of Way is reviewed.
<a href="#">11:19:27 AM</a>		Schneider continues questioning.
<a href="#">11:20:15 AM</a>		Width of travel lanes is reviewed (poster board)
<a href="#">11:21:46 AM</a>		Discussion of auto turns.
<a href="#">11:23:19 AM</a>		Mr. Chang says larger trucks are accommodated at intersections.
<a href="#">11:25:16 AM</a>		Right Hook is discussed.
<a href="#">11:26:20 AM</a>		Mr. Chang says he assumes all users will adhere to rules of the road.
<a href="#">11:27:54 AM</a>		Schneider concludes questioning of Mr. Chang
<a href="#">11:28:10 AM</a>		Mr. Chang is excused.
<a href="#">11:28:55 AM</a>		Coalition calls James Forgette.
<a href="#">11:29:41 AM</a>		Mr. Forgette is sworn into the record.
<a href="#">11:29:54 AM</a>		Mr. Forgette is employed by the Ballard General Terminal Rail Road for 16.5 years.
<a href="#">11:30:50 AM</a>		Mr. Forgette owns 10% of the Terminal.

<b>Time</b>	<b>Speaker</b>	<b>Note</b>
<a href="#">11:31:23 AM</a>		Ballard has 3 active lines total track is 4.5 miles.
<a href="#">11:32:21 AM</a>		Ballard Terminal customers are discussed.
<a href="#">11:32:49 AM</a>		Kiselius objects regarding frame of rebuttal testimony.
<a href="#">11:34:24 AM</a>		Question is withdrawn.
<a href="#">11:35:09 AM</a>		Set-up.
<a href="#">11:35:42 AM</a>		Discussion of rail track in front of the Ballard Cafe.
<a href="#">11:36:00 AM</a>		DHE asks for use of language referring to image form the record (TAB 1 - R10)
<a href="#">11:37:43 AM</a>		Kiselius objects to hypothetical process (STB)
<a href="#">11:41:06 AM</a>		Brower clarifies STB has jurisdiction. City failed to notify STB in EIS.
<a href="#">11:42:16 AM</a>		Kiselius says STB objection is not in their notice of appeal and use of rebuttal to build evidence after the fact is unfair to the City.
<a href="#">11:43:39 AM</a>		DHE overrules objection with regard to use of rail (Cohen).
<a href="#">11:44:41 AM</a>		DHE sustains part of objection.
<a href="#">11:45:02 AM</a>		Brower concludes questioning of Mr. Forgette.
<a href="#">11:45:24 AM</a>		Cohen questions Mr. Forgette about Western Pioneer siting.
<a href="#">11:46:05 AM</a>		Mr. Forgette responds it is the middle track and where it joins with the main line is not illustrated.
<a href="#">11:47:52 AM</a>		Cohen asks Mr. Forgette about current storage customers.
<a href="#">11:51:28 AM</a>		Mr. Forgette maintains the rail line is active according to the STP.
<a href="#">11:52:15 AM</a>		Payment by vendors to Ballard Terminal is discussed.
<a href="#">11:53:31 AM</a>		Class 2 & 3 Rail Road Companies Annual Report is labeled as R54.
<a href="#">11:54:04 AM</a>		Brower objects to line of questioning as irrelevant and beyond scope.
<a href="#">11:56:54 AM</a>		Cohen says this addresses the economic impacts to business owners of Ballard Coalition.
<a href="#">11:57:47 AM</a>		DHE allows line of questioning with redirect and clarifies impact of economics.
<a href="#">11:58:59 AM</a>		Cohen continues questioning Mr. Forgette.
<a href="#">11:59:42 AM</a>		Review of Page 4 of R54.
<a href="#">12:01:21 PM</a>		Payment structure is further discussed.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">12:03:17 PM</a>		Cohen concludes
<a href="#">12:03:42 PM</a>		Cal Portland Letter is submitted as Exhibit A24.
<a href="#">12:04:30 PM</a>		Exhibit A24 is admitted into the record.
<a href="#">12:04:42 PM</a>		Exhibit R54 is admitted into the record with objection by Brower and Schneider.
<a href="#">12:05:33 PM</a>		Objection is overruled.
<a href="#">12:06:36 PM</a>		Brower asks to look at Volume 1 Tab A254.16.
<a href="#">12:08:50 PM</a>		Exhibit A25 is admitted into the record (photo from Vol. 1 Tab A254.16).
<a href="#">12:11:37 PM</a>		DHE asks Mr. Forgette about use of sections of the rail yard and growing business.
<a href="#">12:14:03 PM</a>		Mr. Forgette describes process of moving in the rail yard.
<a href="#">12:14:35 PM</a>		Mr. Forgette is excused.
<a href="#">12:14:50 PM</a>		Coalition calls Mr. Nurdrom.
<a href="#">12:15:03 PM</a>		Hearing Examiner tells Mr. Nurdrom he is still under oath.
<a href="#">12:15:18 PM</a>		Brower asks Mr. Nurdrom if he knows about footage of his driveway.
<a href="#">12:17:11 PM</a>		Kiselius asks for clarification.
<a href="#">12:17:45 PM</a>		Hearing Examiner asks Mr. Borwer rephrase the question.
<a href="#">12:18:18 PM</a>		Mr. Nurdrom acknowledged that fork lifts are sometimes used to move rail cards.
<a href="#">12:19:38 PM</a>		Brower concludes questioning of Nurdrom.
<a href="#">12:20:05 PM</a>		Hearing Examiner asks about standing objection (appellants to make a motion).
<a href="#">12:20:26 PM</a>		Break for lunch until 1:45pm.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">1:46:02 PM</a>		Hearing resumed.
<a href="#">1:46:29 PM</a>		Driveways are discussed.
<a href="#">1:48:27 PM</a>		Hearing Examiner asks if issues can be cured by Ms. Hirschey's testimony.
<a href="#">1:49:21 PM</a>		Schneider says he is not prepared to address material.
<a href="#">1:50:28 PM</a>		Hearing Examiner strikes last 3 columns and footnotes 2,3,4.
<a href="#">1:52:31 PM</a>		Exhibit R55 is admitted into the record.
<a href="#">1:52:54 PM</a>		Hearing Examiner reminds Hirschey she is still under oath.
<a href="#">1:53:37 PM</a>		Rules of Road are discussed.
<a href="#">1:55:39 PM</a>		Hirschey describes tools of methodology.
<a href="#">1:56:10 PM</a>		Schneider asks for an example of methodology for alternative proposals.
<a href="#">1:57:46 PM</a>		Hirschey describes HOV access.
<a href="#">1:59:08 PM</a>		Schneider asks what role does design play in safety analysis.
<a href="#">1:59:33 PM</a>		Hirschey says this would take place when you have alternatives in place.
<a href="#">2:00:54 PM</a>		Hirschey says she has not found errors in the conflict analysis.
<a href="#">2:01:40 PM</a>		Discussion of Mr. Schultheiss' disagreement of Hirschey's testimony and traffic report.
<a href="#">2:04:56 PM</a>		Hirschey continues testimony.
<a href="#">2:06:56 PM</a>		Safety Effects Study is submitted as A26.
<a href="#">2:07:58 PM</a>		Review of Exhibit A1 - Page 037 Driveway and Incursion Zone Areas - Turning Maneuvers within Lane
<a href="#">2:10:35 PM</a>		Schneider asks about warning zones in driveway areas.
<a href="#">2:10:58 PM</a>		Exhibit A 26 is admitted.
<a href="#">2:11:31 PM</a>		Exhibit A3 is reviewed, Table 1.
<a href="#">2:12:32 PM</a>		Kiselius objects - moving away from rebuttal.
<a href="#">2:17:10 PM</a>		Hirschey said she has two rebuttal points based on inaccuracies. Kiselius implication stating collecting data on 58th percentile speed; and Schultheiss statement she did not consider no-build and signaling.
<a href="#">2:19:19 PM</a>		Schneider asks if there is a basis whether the preferred alternative is the safest alternative w/o issue of design.
<a href="#">2:19:49 PM</a>		Hirschey responds no. More conflict points.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">2:20:44 PM</a>		Hirschey continues her testimony. Ballard Avenue is the safer alternative.
<a href="#">2:23:19 PM</a>		Schneider continues questioning Ms. Hershey.
<a href="#">2:23:49 PM</a>		Hirschey (on mike) identifies trail across driveway at posterboard.
<a href="#">2:27:29 PM</a>		Hirschey works from Exhibit R3. Describes SINCRO (?) traffic delay program.
<a href="#">2:28:20 PM</a>		Hirschey addresses methodology on page 6.
<a href="#">2:32:38 PM</a>		Schneider continues questioning Ms. Hershey.
<a href="#">2:34:47 PM</a>		Without gap analysis is it possible to accurately estimate truck movement. Hirschey responds no.
<a href="#">2:35:10 PM</a>		Schneider asks Hirschey about the safety implications.
<a href="#">2:36:46 PM</a>		Schneider asks Hirschey if the EIS discusses the safety implications of or provides a basis for comparison.
<a href="#">2:37:56 PM</a>		Schneider says there is only one design alternative.
<a href="#">2:38:46 PM</a>		Discussion of blind spot Exhibit A6.
<a href="#">2:40:43 PM</a>		Schneider asked Hirschey to remind about description of right hook maneuvers.
<a href="#">2:41:49 PM</a>		There will be potential for right hook accidents in preferred alternatives (Schneider)
<a href="#">2:42:18 PM</a>		Not discussed in EIS (Schneider)
<a href="#">2:44:55 PM</a>		Schneider looks through materials.
<a href="#">2:45:54 PM</a>		Schneider continues with TAB 17 - Exhibit R13
<a href="#">2:46:47 PM</a>		Schneider asks Hirschey what is R13.
<a href="#">2:47:18 PM</a>		Schneider asks if her safety analysis consistent with Exhibit R13
<a href="#">2:47:46 PM</a>		COS...250 - Review (Shared Path Roadways)
<a href="#">2:53:00 PM</a>		Schneider concludes questioning Hirschey.
<a href="#">2:53:23 PM</a>		Kiselius follows up on contraflow movements with Hirschey.
<a href="#">2:54:15 PM</a>		Kiselius asks about conceptual design (Sound Transit Project) with Hirschey.
<a href="#">2:59:05 PM</a>		Kiselius distributes Lynwood Link extension EIS.
<a href="#">3:01:06 PM</a>		Hirschey describes her role in the Lynwood Link EIS.
<a href="#">3:02:54 PM</a>		Review of Page 2-8 of the Lynwood Link EIS.
<a href="#">3:04:27 PM</a>		Hirschey states she worked with 30% design. Kiselius asks if the EIS is based on 30% design.
<a href="#">3:05:47 PM</a>		Kiselius asks if the EIS is to pick the safest alternative. Hirschey responds no, it would be the purpose of Vision Zero.

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<a href="#">3:06:47 PM</a>		Hirschey asks if she has to answer Mr. Kiselius's question.
<a href="#">3:07:33 PM</a>		Kiselius asks about no-build testimony.
<a href="#">3:08:18 PM</a>		Schneider reponds that it cannot be determined that no build is a safer alternative. A methodology would need to be developed to make this determination.
<a href="#">3:10:38 PM</a>		Kiselius concludes questioning of Hirschey.
<a href="#">3:13:16 PM</a>		Hirschey illustration is submitted and admitted as Exhibit A27
<a href="#">3:14:00 PM</a>		The Lynwood Link Extension is submitted as Exhibit R56.
<a href="#">3:15:58 PM</a>		The Lynwood Link Extension is not admitted as Exhibit R56.
<a href="#">3:16:30 PM</a>		Hirschey is excused.
<a href="#">3:16:50 PM</a>		Hearing Examiner discusses time for briefing and site visit.
<a href="#">3:17:59 PM</a>		Resume Exhibits A28-A31 are admitted.
<a href="#">3:21:21 PM</a>		Break until 3:35pm.
<a href="#">3:35:21 PM</a>		Hearing is resumed.
<a href="#">3:35:36 PM</a>		Schedules for closing are discussed. Preference for final closing by 12/22/17. Offers a response to closing due to advocacy.
<a href="#">3:37:00 PM</a>		Kiselius proposes a sequenced briefing.
<a href="#">3:37:51 PM</a>		Cohen says given the size and availability of transcript and ability to respond and supports sequenced briefing.
<a href="#">3:42:19 PM</a>		Schneider suggests: opening brief January 5, willing to waive deadline for decision. City feels it is a lengthy delay.
<a href="#">3:44:27 PM</a>		Cohen says he is in favor of the Hearing Examiner's recommendation for briefing (simultaneous vs. sequenced).
<a href="#">3:50:19 PM</a>		It is agreed briefings are due by 12/22 and final by January 5.
<a href="#">3:50:59 PM</a>		Discussion of Issues: level of analysis to determine safety impacts. Is compliance with law adequate. Notice of Appeal - issue of project objective and scope. Issue of inconsistency of Comp. Plan, Issue of notice parking impacts. Why are economic impacts included in EIS - wants guidance by both sides. Issue raised about shoreline requirement. Additional SEPA case law.

<b>Time</b>	<b>Speaker</b>	<b>Note</b>
<a href="#">3:58:51 PM</a>		Hearing Examiner moves to discussion of site visit. Hearing Examiner will drive and walk the site. Because of the detail in the area he requests guidance on the site visit. Hearing Examiner will send out an email to conduct site visit.
<a href="#">4:04:29 PM</a>		Hearing Examiner thanked counsel for their professional and spirited representation.
<a href="#">4:06:23 PM</a>		Hearing is closed.