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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:  
  
**WALLINGFORD COMMUNITY  
COUNCIL, ET AL.,**  
  
of the adequacy of the FEIS issued by the  
Director, Office of Planning and  
Community Development.

Hearing Examiner File  
  
W-17-006 through W-17-014  
  
CITY OF SEATTLE’S MOTION TO  
EXTEND DEADLINES FOR  
DEPOSITIONS AND PRE-HEARING  
MOTIONS

**I. INTRODUCTION AND RELIEF REQUESTED**

Respondent City of Seattle (“City”) respectfully requests that the Hearing Examiner extend the deadlines for all parties to conduct depositions and to file motions *in limine*, both currently for April 30, 2018,<sup>1</sup> to May 31, 2018. The Examiner’s Second Pre-Hearing Order provided a narrow timeframe for completion of depositions. In light of the Appellants’ voluminous witness lists and a lack of basic information about Appellants’ experts the City needs to prepare for and schedule depositions, the City cannot conduct its depositions within the time allowed under the current schedule. The City asks the Examiner to grant this Motion to allow adequate time to conduct depositions and to assess the witnesses’ testimony for potential motions *in limine*. Extension of these two deadlines will not require further amendment of the remaining schedule as set forth in the Second Prehearing Order.

<sup>1</sup> Second Prehearing Order filed February 18, 2018 (“Second Prehearing Order”).

1 As described below, the City has invited the Appellants to stipulate to this request.  
2 To-date, all of the Appellants have yet to respond. As of the time of filing this motion  
3 only counsel for Seattle Coalition for Affordability, Livability, and Equity (“SCALE”) has  
4 responded and agreed to extend these deadlines for all parties.<sup>2</sup> In light of the rapidly  
5 approaching deadline and without the stipulation of all parties, the City is compelled to  
6 file its motion.

## 7 II. STATEMENT OF FACTS

8 Appellants have collectively identified at least 30 discrete expert witnesses, and far  
9 more than that number of non-expert witnesses.<sup>3</sup> On April 10, 2018, the City’s counsel  
10 notified all Appellants by letter that the City intended to depose all of the Appellants’  
11 experts.<sup>4</sup> The City identified the witnesses it understood would be called as experts, and  
12 asked the Appellants to confirm the list of experts. The City also noted that the number of  
13 witnesses, including experts “is very large and is inconsistent with completing the hearing  
14 in the time allotted by the Examiner,” and requested that Appellants notify the City if the  
15 Appellants no longer intended to call any of their listed experts.<sup>5</sup> The City also asked that  
16 the Appellants respond by April 16, 2018, with a list of dates on which each of their  
17 experts would be available for depositions, and to state whether the Appellants would be  
18 willing to stipulate to extend the deadline for completing depositions from April 30 to  
19 May 31, 2018.<sup>6</sup> As of the date of this Motion, only Appellant, Friends of Ravenna-  
20 Cowen, has responded with available dates for two of its experts (but not for the other four  
21 experts it identified), and only SCALE has responded to the City’s request for a  
22

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23 <sup>2</sup> Weber Dec., ¶ 6.

24 <sup>3</sup> *Id.* at ¶ 2.

25 <sup>4</sup> A copy of the City’s April 10, 2018 letter to Appellants is attached as Exhibit A to the Weber Dec.

<sup>5</sup> Weber Dec., Exh. A.

<sup>6</sup> *Id.*

1 stipulation to extension or the deposition deadline.<sup>7</sup>

2 Finally, the City's April 10 letter asked the Appellants to supplement their  
3 responses to the City's Set of Interrogatories and Requests for Production of Documents  
4 served in January, in which the City had requested information related to Appellants'  
5 experts, including any documents provided to, reviewed, or relied upon by each expert  
6 and communications with each expert. Many Appellants stated in their initial responses to  
7 written discovery that they were not yet able to respond because they had not yet  
8 identified witnesses. Because the Appellants have now identified their experts, the City  
9 requested supplemental responses by April 16 to prepare for depositions.<sup>8</sup> Friends of  
10 Ravenna-Cowen provided a response including some of the requested information on  
11 April 13, 2018.<sup>9</sup> No other Appellant has provided a supplemental response. Many have  
12 stated that they require additional time to respond.<sup>10</sup>

### 13 III. STATEMENT OF ISSUE

14 Whether the deadline for conducting depositions and for filing motions *in limine*  
15 should be extended to allow the parties to conduct depositions, given the large number of  
16 witnesses Appellants have identified and the current lack of information regarding the  
17 identified experts.

### 18 IV. AUTHORITY AND ARGUMENT

19 Hearing Examiner Rules of Practice and Procedure ("HER") 2.16(d) allows for  
20 motions for extension of time, and the Second Prehearing Order allows the parties to bring  
21 motions concerning discovery. HER 1.03(c) also provides, "When questions of practice or  
22 procedure arise that are not addressed by these Rules, the Hearing Examiner shall

23 <sup>7</sup> *Id.* at ¶ 7.

24 <sup>8</sup> Weber Dec., Exh. A.

25 <sup>9</sup> *Id.* at ¶ 7.

<sup>10</sup> *Id.* at ¶¶ 8-9.

1 determine the practice or procedure most appropriate and consistent with providing fair  
2 treatment and due process.”

3 An extension of time to conduct depositions is necessary. The current schedule set  
4 forth in the pre-hearing order provided 13 business days to coordinate, schedule, and  
5 conduct all depositions. The schedule anticipated that those depositions would begin  
6 promptly on April 12, before Appellants had supplemented their witness lists on April 13.  
7 Appellants have collectively identified at least 30 discrete expert witnesses, and far more  
8 than that number of non-expert witnesses.<sup>11</sup> Given the number of expert witnesses alone,  
9 the City cannot reasonably conduct the depositions necessary to prepare for hearing by the  
10 April 30, 2018 deadline.

11 Moreover, the City is awaiting supplemental discovery responses from most  
12 Appellants. This information is necessary to effectively depose Appellants’ experts.<sup>12</sup> The  
13 City is also awaiting scheduling information from many Appellants.

14 By requesting an extension and seeking to depose all of Appellants’ experts, the  
15 City does not concede the reasonableness of Appellants’ witness lists. Based on the large  
16 number of witnesses and the amount of time allotted to the witnesses, the City remains  
17 seriously concerned that Appellants will not be able to present their case within their share  
18 of the time allotted by the Examiner. However, the City cannot assess Appellants’ experts  
19 and prepare for the hearing without a meaningful opportunity to take depositions of even a  
20 subset of the witnesses the Appellants have listed.

21 The City also requests that the Examiner extend the corresponding deadline for  
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23 <sup>11</sup> *Id.* at ¶ 2.

24 <sup>12</sup> The City has requested a discovery conference to resolve these issues on either Friday  
25 April 20 or Monday, April 23. The timing of the discovery conference reflects requests  
from several Appellants for more time to respond to the City’s letter. However, in light of  
the impending deadline, the City is compelled to request an amendment to the schedule.

1 motions *in limine* to May 31, 2018, because any motions *in limine* will be informed by  
2 information obtained through discovery, including depositions. Until depositions and  
3 discovery are complete, the parties cannot fully assess what evidence or testimony they  
4 may seek to exclude, and on what grounds.

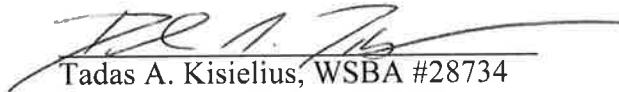
5 Importantly, the City's requested extensions do not necessitate any other  
6 adjustments to the hearing schedule or deadlines. Pre-hearing preparation can continue  
7 and no other deadlines are implicated. Under the Second Prehearing Order, a third  
8 prehearing conference is scheduled for June 11, 2018. The Second Prehearing Order  
9 requires parties to file responses to any motions *in limine* within seven days after the  
10 motion is filed, and replies to responses no later than two days after the response. If the  
11 deadline for filing motions *in limine* is extended to May 31, 2018, the current schedule  
12 allows adequate time for the Examiner to address any motions *in limine* at or before the  
13 third prehearing conference. The City does not seek, and will object to, any requests to  
14 extend the hearing schedule on the basis of its request to extend time for depositions.

#### 15 V. CONCLUSION

16 Based on the arguments above, the City requests that the Hearing Examiner grant  
17 its Motion and extend the deadline for completing depositions and for filing motions *in*  
18 *limine* to May 31, 2018.

19 DATED this 18<sup>th</sup> day of April, 2018.

20 VAN NESS FELDMAN LLP

21  
22 

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W-17-006 through W-17-014  
  
CERTIFICATE OF SERVICE

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as a legal assistant with the office of Van Ness Feldman LLP, on April 18, 2018, filed the City of Seattle's Motion to Extend Discovery Deadlines, Declaration of Jeff Weber with Exhibit A, and this Certificate of Service with the Seattle Hearing Examiner using its e-filing system and that on April 18, 2018, I addressed said documents and deposited them for delivery as follows:

*Seattle Hearing Examiner*  
Ryan Vancil  
Deputy Hearing Examiner  
700 Fifth Avenue, Suite 4000  
Seattle, WA 98104

- By U.S. Mail
- By Messenger
- By E-file

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 18<sup>th</sup> day of April, 2018.



\_\_\_\_\_  
Amanda Kleiss, Declarant